Australian Capital Territory

Court Procedures Rules 2006

SL2006-29

made under the

Court Procedures Act 2004

Republication No 51

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About this republication

The republished law

This is a republication of the *Court Procedures Rules 2006*, made under the *Court Procedures Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 January 2018.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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Australian Capital Territory

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made under the

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Contents

Page

Chapter 1 Preliminary

1	Name of rules	2
3	Overview of rules	2
4	Application of rules	3
5	References to *court*, *judicial officer* etc	4
6	Dispensing with rules	5
7	Dictionary	6
8	Notes	6

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Page

Chapter 2 Civil proceedings generally

Part 2.1 Introductory provisions—ch 2

20 Meaning of *plaintiff* and *defendant* 7
22 Application—ch 2 8

Part 2.2 Starting civil proceedings

Division 2.2.1 How civil proceedings are started

30 Who may start and carry on a proceeding 9
31 Kinds of originating processes 11
32 When civil proceeding starts 11
33 When originating claim must be used 12
34 When originating application must be used 12
35 When originating application may be used 13
36 When originating application taken to be used 15
37 When oral originating application may be made in Supreme Court 15
38 Proceeding incorrectly started by originating claim 16
39 Proceeding incorrectly started by originating application 17
40 Setting aside originating process etc 18

Division 2.2.2 Originating claims

50 Originating claim—content etc 19
51 Originating claim—additional matters for claims for debt and liquidated demands 21
52 Originating claim—statement of claim for motor vehicle death and personal injury claims 21
53 Originating claim—statement of claim for employment death and personal injury claims 22
54 Originating claim—filing and service 24
55 Originating claim—abandonment of excess in Magistrates Court 24

Division 2.2.3 Originating applications

60 Originating application—content etc 25
61 Originating application—filing and service 26
62 When originating application must be served 28
63 What happens if originating application not served in time 28
64 Originating application—filing and service of supporting affidavits 29

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 2.2.4 Rules about originating process

70 Originating process to be sealed 29
71 Numbering etc of proceedings 30
72 Originating process—solicitor's statement about filing 30
73 Defendant taken to be served by filing notice of intention to respond or defence 31
74 Originating process—duration and renewal 31
75 When proceeding taken to be dismissed 32
76 Reinstating dismissed proceeding 33

Part 2.3 Notice of intention to respond and defence

Division 2.3.1 Notice of intention to respond and defence—general

100 No step without notice of intention to respond or defence 34
101 Notice of intention to respond or defence—details to be included 35
102 Notice of intention to respond or defence—filing and service 36
103 Notice of intention to respond or defence—late filing or service 37
104 Ground of defence arising after defence filed etc 38
105 Defence—reliance on defence not disclosed 38
106 Defendant may submit to judgment by notice of intention to respond 39
107 Notice of intention to respond or defence—several defendants with same solicitor 40
108 Notice of intention to respond or defence—person sued under partnership name 41
109 Notice of intention to respond or defence—person incorrectly served as partner 41
110 Notice of intention to respond or defence—person sued under business name 42
111 Conditional notice of intention to respond 43

Division 2.3.2 Notice of intention to respond and defence—proceedings in Supreme Court for possession of land

150 Application—div 2.3.2 45
151 Proceeding for possession of land—leave to file defence etc 45
152 Proceeding for possession of land—filing defence etc 45
153 Proceeding for possession of land—service of defence etc 46

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 2.4 Parties and proceedings

Division 2.4.1 Including causes of action

200 Including causes of action 47
201 Joint and separate claims 47
202 Including causes of action inconveniently etc 47

Division 2.4.2 Including and substituting parties

210 Necessary parties 48
211 Including parties—common issues of law or fact 49
212 Including parties—defendants may be sued jointly, severally, or in alternative 49
213 Including parties—joint entitlement 50
214 Including parties—joint or several liability 50
215 Including parties—plaintiff in doubt about defendant etc 51
216 Including defendants—identical interest in relief unnecessary 51
217 Including parties inconveniently etc 51
218 Including parties—parties incorrectly included or not included 52
219 Counterclaim or set-off when co-plaintiff wrongly included 52
220 Court may include party if appropriate or necessary 53
221 Plaintiffs may be included or substituted 53
222 Inclusion or substitution as plaintiff requires agreement 54
223 Including parties—procedure 54
224 Including parties—inclusion to recover costs 54

Division 2.4.3 Changing parties

230 Removing parties 55
231 Party becomes bankrupt, dies or becomes person with mental disability 55
232 Amending or setting aside order for new party made on death etc of party 57
233 Failure to proceed after death of party 58

Division 2.4.4 Included or changed parties—future conduct of proceedings

240 Application—div 2.4.4 59
241 Included or substituted defendant—filing and service of amended originating process 59
242 Included or substituted parties—date proceeding taken to start 59

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

243 Included or substituted parties—effect of action previously taken in proceeding 60

244 Included or changed parties—other orders about future conduct of proceeding 61

Division 2.4.4A Representation in proceedings for personal injuries

245 Separate representation of defendant for insurer's period on risk 61

Division 2.4.5 Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1

250 One proceeding for benefit of members of deceased person's family 62

251 Orders in proceedings for compensation to relatives in death claims 62

Division 2.4.6 Representation—trustees and personal representatives

255 Application—div 2.4.6 63

256 Representation—by trustees and personal representatives 63

257 Representation—trustees and personal representatives must be parties 64

258 Representation—beneficiaries and claimants 64

259 Representation—proceeding about administration of deceased person's estate or trust property 65

260 Representation—orders bind represented people in estate or trust proceeding 66

261 Representation—interests of deceased person's estate 66

Division 2.4.7 Representation—numerous concurrent interests

265 Application—div 2.4.7 67

266 Representation—numerous concurrent interests 67

267 Orders in div 2.4.7 proceeding bind represented people 68

Division 2.4.8 Multiple proceedings

270 Consolidation etc of proceedings 69

Division 2.4.9 People with a legal disability

275 Person with legal disability—litigation guardian to start proceeding etc 70

276 Who may be litigation guardian 71

277 Litigation guardian—liability for costs 72

278 Becoming a litigation guardian 72

279 Person with legal disability—effect of no notice of intention to respond or defence 73

280 Litigation guardian—appointment and removal by court 73

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

281 Litigation guardian—accounts 74
282 Person with legal disability—approval of settlement etc 75

Division 2.4.10 Partnerships

285 Meaning of *partnership proceeding*—div 2.4.10 75
286 Proceeding in partnership name 76
287 Disclosure of partners' names 76

Division 2.4.11 Business names

290 Proceeding in registered business name 77
291 Proceeding in business name if unregistered etc 77
292 Business names—amendment about parties 78

Part 2.5 Third-party and similar proceedings

300 Purpose—pt 2.5 80
301 When a third-party proceeding starts 80
302 Third-party proceeding—when available 80
303 Third-party notice—content etc 81
304 Third-party notice—additional matters for claims for debt and liquidated demands 82
305 Third-party notice—statement of claim for certain personal injury claims 83
306 Third-party notice—filing 83
307 Third-party notice—sealing 84
308 Third-party notice—service 84
309 Third-party notice—effect of service on third party 85
310 Third-party notice—setting aside 85
311 Third-party notice—notice of intention to respond and defence 86
312 Service of pleadings after filing of third-party notice 86
313 Counterclaim by third party 86
314 Third-party notice—default by third party 86
315 Third parties—disclosure 87
316 Third-party notice—hearing 88
317 Third party—extent bound by judgment between plaintiff and defendant 89
318 Third-party notice—judgment between defendant and third party 89
319 Notice claiming contribution or indemnity against another party 89

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
320 Notice claiming contribution or indemnity—filing and service etc 91
321 Contribution under Civil Law (Wrongs) Act, s 21 92
322 Third-party notice—fourth and subsequent parties 92

Part 2.6 Pleadings

Division 2.6.1 Application—pt 2.6
400 Application—pt 2.6 93

Division 2.6.2 Rules of pleading
405 Pleadings—formal requirements 93
406 Pleadings—statements in 94
407 Pleadings—matters to be specifically pleaded 95
407A Pleadings in human rights proceedings—generally 96
407B Pleadings in human rights proceedings—public authorities 97
408 Pleadings—money claims short form 97
409 Pleadings—certain facts need not be pleaded 99
410 Pleadings—technical objections 100
411 Pleadings—references to spoken words and documents 100
412 Pleadings—conditions precedent 100
413 Pleadings—matters arising after start of proceeding 100
414 Pleadings—inconsistent allegations etc 101
415 Pleadings—notice pleaded as a fact 101
416 Pleadings—implied contracts or relations 101
417 Pleadings—kind of damages etc 102
418 Pleadings—amount of unliquidated damages 102
419 Pleadings—other relief 103

Division 2.6.3 Pleadings—general
425 Pleadings—striking out 103
426 Pleadings—trial without 104

Division 2.6.4 Particulars
430 Pleadings—all necessary particulars must be included 105
431 Pleadings—use of ‘Scott schedule’ 105
432 Pleadings—negligence and breach of statutory duty 106
433 Pleadings—how particulars must be given 106
434 Pleadings—application for better particulars 106

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
435	Pleadings—failure to comply with better particulars order	107
Division 2.6.5	**Answering pleadings**	
440	Pleadings—answering	107
441	Pleadings—denials and non-admissions	108
442	Pleadings—defence to debt and liquidated demand claims	108
443	Pleadings—defence to motor vehicle and employment personal injuries claims	109
444	Pleadings—defence to proceeding on bill of exchange etc	109
445	Pleadings—denial of representative capacity or partnership constitution	110
446	Pleadings—denial of contract	110
447	Pleadings—allegations admitted unless denied etc	110
448	Pleadings—unreasonable denials and non-admissions	111
449	Pleadings—confession of defence	111
Division 2.6.6	**Special defences**	
455	Pleadings—defence of tender	111
456	Pleadings—defence of set-off	112
Division 2.6.7	**Counterclaims**	
460	Counterclaim—cause of action arising after start of proceeding	113
461	Counterclaim—against plaintiff	113
462	Counterclaim—against additional party	113
463	Counterclaim—abandonment of excess in Magistrates Court	115
464	Counterclaim—pleading	116
465	Counterclaim—plaintiff may rely on previous pleadings	116
466	Counterclaim—answer to	116
467	Counterclaim—defence arising after answer	117
468	Counterclaim—effect of no answer	117
469	Counterclaim—response to answer	118
470	Counterclaim—conduct and pleading	118
471	Counterclaim—order for separate hearing	119
472	Counterclaim—after judgment etc in original proceeding	119
473	Counterclaim—judgment for balance	119
474	Counterclaim—stay of claim	120

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 2.6.8 Progress of pleading

480 Pleadings—reply to defence 120
481 Pleadings—after reply 120
482 Pleadings—joinder of issue 121
483 Pleadings—close 122

Division 2.6.9 Admissions

490 Admissions—voluntary admission 122
491 Admissions—notice to admit facts or documents 122
492 Admissions—withdrawal 123
493 Admissions—orders on 123

Part 2.7 Amendment

500 Application—pt 2.7 125
501 Amendment—when must be made 125
502 Amendment—of documents 125
503 Amendment—after limitation period 126
504 Amendment—of originating process 127
505 Amendment—of pleadings before close of pleadings 127
506 Amendment—of pleadings disallowed 128
507 Amendment—of pleadings after close of pleadings 128
508 Amendment—when leave to amend ceases to have effect 128
509 Amendment—procedure 129
510 Amendment—person required to make 130
511 Amendment—service of amended or revised document etc 130
512 Amendment—pleading to 131
513 Amendment—costs 131
514 Amendment—taking effect 131

Part 2.8 Disclosure

Division 2.8.1 Interpretation—pt 2.8

600 Definitions—pt 2.8 133
601 Meaning of *privileged from production*—pt 2.8 134

Division 2.8.2 Disclosure of documents

605 Discoverable documents 135

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		Page
606	Orders about disclosure	136
607	Notice to disclose discoverable documents	138
608	List of discoverable and privileged documents etc	139
609	Claim for privilege—challenge etc	141
610	Claim for privilege—waiver	142
611	Continuing disclosure	142
Division 2.8.3	**Production and inspection**	
620	Production of documents for inspection	143
621	Orders about production of documents for inspection	144
622	Effect of inspection of documents disclosed by another party	146
623	Production of documents at hearing of proceeding	146
Division 2.8.4	**Interrogatories**	
630	Service of interrogatories	147
631	Objections to answer interrogatories	148
632	Orders about interrogatories	148
633	Answers to interrogatories	150
634	Answers to interrogatories—belief	151
635	Answers to interrogatories to be verified	152
636	Tendering of answers to interrogatories in evidence	152
Division 2.8.5	**Who may verify list of documents or answers to interrogatories?**	
640	Answers by governments, corporations etc	152
641	Party cannot swear affidavit personally	153
Division 2.8.6	**Preliminary discovery**	
650	Discovery to identify potential defendant	154
651	Discovery to identify right to claim relief	157
652	Order under div 2.8.6—privilege	158
653	Order under div 2.8.6—costs	159
Division 2.8.7	**Non-party production**	
659	Application—div 2.8.7	159
660	Notice for non-party production—issue	159
661	Notice for non-party production—service	160
662	Notice for non-party production—inspection by other parties	160
663	Notice for non-party production—application to set aside	161

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Page

664 Notice for non-party production—privilege or objection 162
665 Notice for non-party production—failure to produce documents 163
666 Notice for non-party production—copying produced documents 163
667 Notice for non-party production—costs 164

Division 2.8.8 Discovery—other provisions

670 Contravention of pt 2.8 order—contempt of court 164
671 Contravention of pt 2.8 order—other action 165
672 Solicitor to notify party of certain matters about pt 2.8 165
673 Improper use of disclosed document 166
674 Failure to disclose document 167
675 Discovery by electronic means—practice notes 167

Part 2.9 Preservation of rights and property

Division 2.9.1 Interpretation—pt 2.9

700 Meaning of *usual undertaking as to damages*—pt 2.9 168

Division 2.9.2 Interim preservation, distribution and payment

705 Application—div 2.9.2 168
706 Urgent orders before start of proceeding 168
707 Interim distribution 170
708 Interim income 170
709 Payment before finding out everyone interested 171

Division 2.9.3 Inspection, detention, custody and preservation of property

715 Inspection, detention, custody and preservation of property—orders etc 171
716 Disposal of property other than land 173
717 Order for inspection, detention, custody or preservation affecting non-party 174
718 Application for order for inspection, detention, custody or preservation 174
719 Division 2.9.3—other jurisdiction of court not affected 174

Division 2.9.4 Injunctions and similar orders

Subdivision 2.9.4.1 Injunctions and similar orders—generally

725 Meaning of *division 2.9.4 order* 175
726 Definitions—div 2.9.4 175

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

727 Division 2.9.4—other jurisdiction of court not affected 175
728 Division 2.9.4 order—procedure 176
729 Division 2.9.4 order without notice etc 176
730 Division 2.9.4 order without trial 177
731 Division 2.9.4 order—expedited trial 178
732 Division 2.9.4 order—damages and undertaking as to damages 178
733 Division 2.9.4 order—other undertakings and security to perform undertaking 178

Subdivision 2.9.4.2 Freezing orders

740 Definitions—sdiv 2.9.4.2 179
741 Freezing orders—general 179
742 Ancillary orders 181
743 Freezing orders—order against enforcement debtor or prospective enforcement debtor or third party 181
745 Freezing orders—costs 183

Subdivision 2.9.4.3 Search orders

750 Definitions—sdiv 2.9.4.3 184
751 Search orders—general 184
752 Search orders—requirements for making order 186
753 Search orders—terms of order 187
754 Search orders—independent solicitors 188
755 Search orders—costs 188

Division 2.9.5 Receivers

765 Application—div 2.9.5 188
766 Receiver—agreement to act as etc 189
767 Receiver—application for order appointing etc 189
768 Receiver—address for service 189
769 Receiver—security 190
770 Receiver—remuneration 190
771 Receiver—accounts 190
772 Receiver—default 191
773 Receiver—powers 192
774 Receiver—duty in relation to property 193
775 Receiver—liability 193

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
776 Receiver—death of 193

Division 2.9.6 Sales of land by court order

780 Meaning of *land*—div 2.9.6 194
781 Application—div 2.9.6 194
782 Sale of land—order 194
783 Sale of land—conduct of sale 194
784 Sale of land—certificate of sale result 195
785 Mortgage, exchange or partition 196

Part 2.10 Offers of compromise

1000 Application—pt 2.10 197
1001 Definitions—pt 2.10 197
1002 Making offer 197
1003 Acceptance of offer 199
1004 Withdrawal of acceptance 200
1005 Failure to comply with accepted offer 200
1006 Disclosure of offer to court 201
1007 Compromises in certain Supreme Court proceedings 202
1008 Offer to contribute 202
1009 Offer accepted and no provision for costs 203
1010 Offer not accepted and judgment no less favourable to plaintiff 203
1011 Offer not accepted and judgment no more favourable to plaintiff 204
1012 Offer not accepted and judgment no less favourable to defendant 205
1013 Costs in relation to interest 206
1014 Miscellaneous 206

Part 2.11 Resolving proceedings early

Division 2.11.1 Uncontested debts and liquidated demands

1100 Meaning of *prescribed costs amount*—div 2.11.1 208
1101 Application—div 2.11.1 208
1102 Stay of debt etc proceeding on payment of amount sought 208
1103 Assessment of costs for stayed debt etc proceeding 209
1104 Judgment on acknowledgment of debt or liquidated demand 209

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 2.11.2 Default by plaintiff

1110 Default by plaintiff—dismissal of proceeding 211

Division 2.11.3 Default by defendant

1115 Definitions—div 2.11.3 212
1116 Application—div 2.11.3 213
1117 When is a defendant *in default*—generally 213
1118 Default judgment—generally 216
1119 Default judgment—relevant affidavits 217
1120 Default judgment—debt or liquidated demand 218
1121 Default judgment for debt or liquidated demand—assessment of costs 219
1122 Default judgment—unliquidated damages 220
1123 Default judgment—detention of goods 220
1124 Default judgment—recovery of possession of land 221
1125 Default judgment—mixed claims 223
1126 Default judgment—other claims 223
1127 Default judgment—costs only 224
1128 Default judgment—setting aside etc 224

Division 2.11.4 Default by defendant—partial defence

1135 Definitions—div 2.11.4 225
1136 Application—div 2.11.4 225
1137 When is a defendant *in default*—partial defence 226
1138 Default judgment—partial defence 227
1139 Default judgment—application of div 2.11.3 228

Division 2.11.5 Summary judgment

1145 Application—div 2.11.5 229
1146 Summary judgment—for plaintiff 229
1147 Summary judgment—for defendant 230
1148 Claims not disposed of by summary disposal 231
1149 Evidence in summary judgment proceedings 231
1150 Summary judgment applications—filing and service 232
1151 Summary judgment applications—directions etc 232
1152 Summary judgment applications—costs 233
1153 Summary judgment—stay of enforcement 233
1154 Summary judgment—relief from forfeiture 233

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
1155 Summary judgment—setting aside 233

Division 2.11.6 Discontinuance and withdrawal

1160 Discontinuance or withdrawal by plaintiff 234
1161 Discontinuance or withdrawal of counterclaim by defendant 234
1162 Withdrawal of notice of intention to respond 235
1163 Costs of discontinuance or withdrawal 235
1164 Withdrawal of defence or further pleading 235
1165 Notice of discontinuance or withdrawal 236
1166 Discontinuance or withdrawal by party representing someone else etc 236
1167 Discontinuance or withdrawal—subsequent proceeding 236
1168 Consolidated proceedings and counterclaims 237
1169 Stay pending payment of costs 237

Division 2.11.7 Mediation and neutral evaluation

1175 Purpose—div 2.11.7 237
1176 Definitions—div 2.11.7 237
1177 Mediation—appointment of mediator 238
1178 Neutral evaluation—appointment of evaluator 238
1179 Mediation or neutral evaluation—referral by court 239
1180 Mediation or neutral evaluation—duty of parties to take part 239
1181 Mediation or neutral evaluation—costs 239
1182 Mediation or neutral evaluation—agreements and arrangements arising from sessions 240
1183 Neutral evaluation—privilege 240
1184 Evaluators—secrecy 241
1185 Evaluators—protection from liability 241

Part 2.12 Expert evidence

Division 2.12.1 Expert evidence generally

1200 Purposes—pt 2.12 242
1201 Meaning of *code of conduct*—pt 2.12 242
1202 Meaning of *expert*, *expert witness* and *expert report* 243
1203 Expert witnesses to agree to be bound by code of conduct 244
1204 Expert witness—immunity 244
1205 Court may give directions in relation to expert evidence 244

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 2.12.2 Multiple expert witnesses for same issue

1210 Application—div 2.12.2 246

1211 Court may direct experts to meet etc 246

Division 2.12.3 Expert reports

1240 Application—div 2.12.3 248

1241 Service of expert reports 249

1242 Supplementary expert reports 250

1243 Expert evidence to be covered by expert report 250

1244 Expert reports admissible as evidence of opinion etc 250

1245 Requiring attendance of expert for cross-examination etc 251

1246 Tender of expert report 251

Part 2.13 Pre-trial procedures

1301 Application—pt 2.13 252

1304 Statement of particulars before trial—personal injury claims 252

1305 Statement of particulars before trial—compensation to relatives in death claims 255

1311 Expedited trial 257

1312 Court book 258

1325 Listing hearing 259

1326 Special fixture 260

1327 Directions hearings and listing hearings—costs 261

Part 2.14 Court supervision

Division 2.14.1 Directions

1400 Directions—application 262

1401 Directions generally 262

1402 Proceeding already being managed by court 265

1403 Decision in proceeding 266

1404 Failure to comply with direction etc 266

Division 2.14.1A Transfer of proceedings between courts

1430 Transfer of proceeding from Supreme Court to Magistrates Court—application 267

1431 Transfer of proceeding from Supreme Court to Magistrates Court—procedure 268

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

1432 Transfer of proceeding from Magistrates Court to Supreme Court—application 269

1433 Transfer of proceeding from Magistrates Court to Supreme Court—stay of proceeding 269

Division 2.14.1B Removal of applications from ACAT to Supreme Court

1440 Removal of applications from ACAT to Supreme Court—application 270

1441 Removal of applications from ACAT to Supreme Court—procedure 270

Division 2.14.2 Failure to comply with rules or order

1450 Effect of failure to comply with rules 271

1451 Application because of failure to comply with rules 272

1452 Failure to comply with order to take step 272

Part 2.15 Trial

Division 2.15.1 Interpretation—pt 2.15

1500 Meaning of *question*—pt 2.15 274

Division 2.15.2 Proceedings at trial

1505 Trial—defendant or plaintiff not appearing 274

1506 Trial—adjournment etc 275

1507 Trial—third-party proceeding 275

1508 Order of evidence and addresses 275

1509 View by court 276

1510 Associate etc to record hearing times 277

1511 Associate to enter findings etc 277

Division 2.15.3 Separate decisions on questions

1520 Application—div 2.15.3 277

1521 Separate decisions on questions—order 278

1522 Separate decisions on questions—directions 279

1523 Separate decisions on questions—decision 279

Division 2.15.4 Assessors and court-appointed referees

1530 Assessors 279

1531 Referee—referral of question etc 280

1532 Referee—appointment 280

1533 Referee—amendment of order referring question etc 281

1534 Referee—conduct under reference 281

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
1535 Referee—submission of question to court 282
1536 Referee—report 282
1537 Referee—proceeding on report 283
1538 Assessor and referee—remuneration 284

Division 2.15.5 Assessment of damages

1545 Application—div 2.15.5 284
1546 Assessment of damages 284
1547 Assessment of damages—use of affidavit evidence 285
1548 Partial judgment for damages to be assessed 285
1549 Damages to time of assessment 285

Part 2.16 Judgments and other orders

1600 Orders—required by nature of case 287
1601 Judgment book 287
1602 Judgments—several claims 288
1603 Orders—set off between enforceable money orders 288
1604 Judgments—detention of goods 289
1605 Orders—making and effect 290
1605A Orders—shortened form 290
1606 Orders—filing 290
1607 Orders—certified duplicate 292
1608 Orders—reasons 292
1609 Orders—reservation of decision 293
1610 Orders—time for compliance 293
1611 Orders—by consent 294
1612 Orders—by consent in proceeding 295
1613 Orders—setting aside etc 295
1614 Order dismissing proceeding—effect 296
1615 Orders—joint liability 296
1616 Payment into court—payment of amount paid into court under order 298
1617 Payment into court—amount recovered by person with legal disability 298
1618 Person with legal disability—orders about recovered amounts etc 298
1618A Person with mental disability—payment out to public trustee and guardian 299
1619 Interest up to judgment 300

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

1620 Interest after judgment 302
1621 Judgment for interest only 303
1622 Interest after judgment—usual order as to interest 303
1623 Change in interest rates up to and after judgment 305

Part 2.17 Costs

Division 2.17.1 Costs generally

1700 Definitions—pt 2.17 306
1701 Costs—general provisions 307
1702 Costs—agreement about costs 307
1703 Costs—order against non-party 307
1704 Costs—failure to comply with subpoena etc 309
1705 Costs—for issue or part of proceeding 310
1706 Costs—if unnecessary to continue proceeding 310
1707 Costs—proceeding removed to another court 310
1708 Costs—in account 311

Division 2.17.2 Entitlement to costs

1720 Costs—entitlement to recover 311
1721 Costs—general rule 312
1722 Costs—solicitors' costs generally 312
1723 Costs—*relevant amount* for Magistrates Court proceedings 313
1724 Solicitors' costs—separate judgments against defendants in Magistrates Court 315
1725 Solicitors' costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction 315
1726 Costs—amendment of documents 317
1727 Costs—party not interested in application 317
1728 Costs—for application reserved 317
1729 Costs—extending or shortening time 318
1730 Costs—inquiry to find person entitled to property 318
1731 Costs—assessment of receiver's costs 318
1732 Costs—trustee 318
1733 Costs—solicitor appointed litigation guardian 319
1734 Costs—assessment costs 319
1735 Costs—counsel's advice and settling documents 319

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Page
1736 Costs—evidence 319
1737 Costs—solicitor advocate 320
1738 Costs—retainer for counsel 320
1739 Costs—counsel's fees for applications 320
1740 Costs—fixed costs for winding-up application 321
1741 Costs—fixed costs for enforcement order 321

Division 2.17.3 Costs of party in proceeding

1750 Application—div 2.17.3 322
1751 Costs—assessed on party and party basis 322
1752 Costs—assessed on solicitor and client etc basis 323
1753 Costs—legal practitioner's delay etc 324
1754 Costs—disallowance of costs for vexatious document etc 325

Division 2.17.4 Costs—registrar's powers and discretion

1760 Costs—registrar's general powers 326
1761 Costs—registrar's discretion in assessing 327

Division 2.17.5 Procedure for assessing costs

1800 Costs—when bill of costs to be filed etc 328
1801 Costs—if costs out of fund bill to be sent to clients 329
1802 Costs—content of bill of costs 329
1803 Costs—failure to file and serve bill of costs 330
1804 Costs—payment of disbursements 330
1805 Costs—professional charges and disbursements 331
1806 Costs—amendment and withdrawal of bill of costs 331
1807 Costs—notice of objection to bill of costs 332
1808 Costs—assessment must be limited 333
1809 Costs—default assessment if no objection to bill of costs 333
1810 Costs—setting aside default assessment 334
1811 Costs—offer to settle 334
1812 Costs—acceptance of offer to settle 336
1813 Costs—rejection of offer to settle 336
1814 Costs—Calderbank offer to settle 336

Division 2.17.6 Procedure on costs assessment

1830 Costs—attendance of parties at assessment 337
1831 Costs—notice of adjournment of assessment 338

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
1832 Costs—delay before registrar etc 338
1833 Costs—set off of costs 339
1834 Costs—bill of costs reduced by 15% or more 339
1835 Costs—registrar's certificate of assessment 339
1836 Costs—interim certificates of assessment 340

Division 2.17.7 Reconsideration and review of costs assessment
1850 Application—div 2.17.7 340
1851 Costs—application for reconsideration 341
1852 Costs—procedure for reconsideration 341
1853 Costs—reply to objection on reconsideration 342
1854 Costs—reconsideration of registrar's assessment 342
1855 Costs—review by court 343

Division 2.17.8 Security for costs
1900 Security for costs—application and order 344
1901 Security for costs—when court may make order 344
1902 Security for costs—discretionary factors 345
1903 Security for costs—way security given 346
1904 Security for costs—effect of order 346
1905 Security for costs—setting aside or amending order 347
1906 Security for costs—finalising security 347

Division 2.17.9 Miscellaneous—pt 2.17
1920 Liquidator, guardian or manager—accounts 348

Part 2.18 Enforcement

Division 2.18.1 Enforcement—general
2000 Definitions—pt 2.18 349
2001 Enforcement orders generally 354
2002 Enforcement—enforcement application is application in original proceeding 355
2003 Enforcement—by or against non-party 355
2004 Enforcement—amount recoverable 356
2005 Enforcement—separate enforcement for costs 356
2006 Enforcement—order in partnership name 356
2007 Enforcement—against property of partnership 357

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
2008	Enforcement—against property of business	357
2009	Enforcement—enforcement of Supreme Court order in Magistrates Court	358
2010	Enforcement—enforcement of Magistrates Court order in Supreme Court	358
2010A	Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act	359
2010B	Enforcement—assessment of costs for certificate of registration	361
2011	Enforcement—demand for compliance unnecessary	361
2012	Enforcement—when leave required	362
2013	Enforcement—stay	364
2014	Enforcement—conditional orders	365
2015	Enforcement—service of order and related information	365
Division 2.18.2	**Enforcement orders—general**	
2050	Enforcement orders—content and issue	366
2051	Enforcement orders—application to set aside	368
2052	Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers	369
2053	Enforcement orders—return by enforcement officer	370
2054	Enforcement orders—priority	371
2055	Enforcement orders—payment under order	371
2056	Enforcement orders—orders about enforcement	372
2057	Enforcement orders—consecutive and concurrent orders	372
2058	Enforcement orders—deceased enforcement debtor	373
Division 2.18.3	**Enforcement of money orders—enforcement hearings**	
2100	Enforcement hearing—application by enforcement creditor	373
2101	Enforcement hearing—otherwise than on enforcement creditor's application	375
2102	Enforcement hearing—limit on number of applications	375
2103	Enforcement hearing—order for hearing etc	376
2104	Enforcement hearing—who may be directed to attend by enforcement hearing subpoena	377
2105	Enforcement hearing—service of enforcement hearing subpoena	378
2106	Enforcement hearing—statement of enforcement debtor's financial position	378
2107	Enforcement hearing—subpoena to other person	379

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
2108 Enforcement hearing—meeting of parties 379
2109 Enforcement hearing—examination 380
2110 Enforcement hearing—enforcement hearing warrant issue 382
2111 Enforcement hearing—enforcement hearing warrant contents etc 383
2112 Enforcement hearing—orders 384

Division 2.18.4 Enforcement of money orders—instalment orders

2150 Instalment order—making 386
2151 Instalment order—application by enforcement debtor 387
2152 Instalment order—when application by enforcement debtor requires leave 388
2153 Instalment order—application by enforcement creditor 389
2154 Instalment order—relevant considerations 391
2155 Instalment order—stay of enforcement 391
2156 Instalment order—content and issue 392
2157 Instalment order—instalment order agreement 393
2158 Instalment order—service 394
2159 Instalment order—no other enforcement while in force 394
2160 Instalment order—amending, suspending or setting aside 394
2161 Instalment order—ceasing to have effect other than for nonpayment 396
2162 Instalment order—ceasing to have effect for nonpayment 396
2163 Instalment order—record of payments 397

Division 2.18.5 Enforcement of money orders—seizure and sale orders

2200 Seizure and sale order—making 398
2201 Seizure and sale order—application 398
2202 Seizure and sale order—additional exempt property 400
2203 Seizure and sale order—entry, search and seizure powers if no consent 400
2204 Seizure and sale order—assistance to enforcement debtor 402
2205 Seizure and sale order—notice of order 403
2206 Seizure and sale order—notice of property seized 404
2207 Seizure and sale order—removal etc of seized property 405
2208 Seizure and sale order—application for instalment order stays sale of seized property 406
2209 Seizure and sale order—property seized not abandoned 406

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
2210	Seizure and sale order—seizure of real property	406
2211	Seizure and sale order—enforcement debtor not to deal with real property	407
2212	Seizure and sale order—order of seizing and selling property	407
2213	Seizure and sale order—payment before sale	408
2214	Seizure and sale order—suspension etc of enforcement	408
2215	Seizure and sale order—agreements to withdraw and re-enter	409
2216	Seizure and sale order—nature of sale	410
2217	Seizure and sale order—setting reasonable amount	412
2218	Seizure and sale order—additional provisions relating to land	412
2218A	Seizure and sale order—appointment of real estate agent	414
2219	Seizure and sale order—power of entry for auction of land	415
2220	Seizure and sale order—sale at best price obtainable	415
2221	Seizure and sale order—advertisement of sale	416
2222	Seizure and sale order—postponement of sale	417
2223	Seizure and sale order—amounts received	418
2224	Seizure and sale order—terms about payment	418
2225	Seizure and sale order—securities held by enforcement officer	419
2226	Seizure and sale order—personal property subject to conditional bill of sale	419
2227	Seizure and sale order—effect of sale of property	420
2228	Seizure and sale order—effect of ending of order on completion of sale etc	420
2229	Seizure and sale order—appropriation of payments towards order debt	421
2230	Seizure and sale order—documents giving effect to sale	421
2231	Seizure and sale order—payment to enforcement debtor	422
2232	Seizure and sale order—purchase by enforcement officer or auctioneer prohibited	423
2233	Seizure and sale order—account etc	423
2234	Seizure and sale order—report by enforcement officer	424
2235	Seizure and sale order—order for disposal and return of property to enforcement debtor	424

Division 2.18.6 Enforcement of money orders—debt redirection orders generally

2300	Application—div 2.18.6	425
2301	Debt redirection order—making	426

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
2302 Debt redirection order—application 426
2303 Debt redirection order—relevant considerations 428
2304 Debt redirection order—joint funds 429
2305 Debt redirection order—partnership debts 429
2306 Debt redirection order—account with financial institution 429
2307 Debt redirection order—claim by someone else 430
2308 Debt redirection order—when debt redirected 431
2309 Debt redirection order—notice by third person to enforcement creditor 431
2310 Debt redirection order—payments by third person 432
2311 Debt redirection order—third person disputes liability 432
2312 Debt redirection order—discharge of third person 433
2313 Debt redirection order—payment to enforcement debtor despite redirection 433
2314 Debt redirection order—amending, suspending or setting aside 434
2315 Debt redirection order—procedure if order not complied with 436

Division 2.18.7 Enforcement of money orders—regular redirections from financial institutions

2330 Application—div 2.18.7 437
2331 Regular redirection order—application of div 2.18.6 437
2332 Regular redirection order—making 437
2333 Regular redirection order—content 438
2334 Regular redirection order—service and coming into force 438
2335 Regular redirection order—financial institution to make payments etc 439
2336 Regular redirection order—enforcement debtor not to defeat order 440
2337 Regular redirection order—no other enforcement while in force 440
2338 Regular redirection order—ceasing to have effect 440
2339 Regular redirection order—return of excess 441
2340 Regular redirection order—record of payments 441

Division 2.18.8 Enforcement of money orders—earnings redirection orders

2350 Earnings redirection order—making 443
2351 Earnings redirection order—application 443
2352 Earnings redirection order—relevant considerations 444
2353 Earnings redirection order—limit 445

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

2354 Earnings redirection order—information about enforcement debtor's earnings 445
2355 Earnings redirection order—content 446
2356 Earnings redirection order—service and coming into force 446
2357 Earnings redirection order—person served not employer 447
2358 Earnings redirection order—employer to make payments etc 448
2359 Earnings redirection order—no other enforcement while in force 449
2360 Earnings redirection order—amending, suspending or setting aside 449
2361 Earnings redirection order—ceasing to have effect 450
2362 Earnings redirection order—return of excess 451
2363 Earnings redirection order—record of payments 452
2364 Earnings redirection order—2 or more orders in force 453
2365 Earnings redirection order—person served ceasing to be employer 453
2366 Earnings redirection order—enforcement debtor changes or ceases employment 453
2367 Earnings redirection order—directions 454
2368 Earnings redirection order—employment protection 455
2369 Earnings redirection order—procedure if order not complied with 455

Division 2.18.9 Enforcement of money orders—charging orders

2400 Application—div 2.18.9 456
2401 Charging order—making 456
2402 Charging order—application 457
2403 Charging order—effect 458
2404 Charging order—enforcement debtor dealing with charged property 459
2405 Charging order—issuer etc dealing with charged property 459
2406 Charging order—application to enforce charge 460
2407 Charging order—procedure against partnership property for partner's separate order debt 460

Division 2.18.10 Enforcement of money orders—amounts in court and stop orders

2420 Enforcement orders—amounts in court 461
2421 Enforcement orders—stop orders 462

Division 2.18.11 Enforcement of money orders—receivers

2430 Application—div 2.18.11 463
2431 Receiver—appointment 463

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

2432 Receiver—application for appointment 463
2433 Receiver—relevant considerations for appointment 464
2434 Receiver—powers 465
2435 Receiver—general provisions apply 465

Division 2.18.12 Enforcement of non-money orders—general

2440 Enforcement—orders for possession of land 465
2441 Enforcement—orders for return of goods etc 466
2442 Enforcement—orders to do or not do an act 466
2443 Enforcement—undertakings 468
2444 Enforcement—failure of individual to comply with subpoena etc 469
2445 Enforcement—failure of corporation to comply with subpoena etc 470
2446 Enforcement by contempt or seizing and detaining property—preconditions 471

Division 2.18.13 Enforcement of non-money orders—orders for delivery of possession of land

2450 Application—div 2.18.13 472
2451 Order for delivery of possession of land—making 472
2452 Orders for delivery of possession of land—preconditions 473

Division 2.18.14 Enforcement of non-money orders—orders for seizure and delivery of goods

2460 Order for seizure and delivery of goods—making 474

Division 2.18.15 Enforcement of non-money orders—orders for seizure and detention of property

2470 Order for seizure and detention of property—making 475
2471 Order for seizure and detention of property—preconditions 476
2472 Order for seizure and detention of property—against officer of corporation 476
2473 Order for seizure and detention of property—return of seized property 476

Division 2.18.16 Enforcement—contempt

2500 Contempt—application of div 2.18.16 476
2501 Contempt—applications generally 477
2502 Contempt—application by registrar 477
2502A Contempt of the Australian Crime Commission 478
2503 Contempt—arrest warrant if respondent likely to abscond etc 478
2504 Contempt in face or hearing of court—alternative procedure 479

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

2505 Contempt—arrest warrant 480
2506 Contempt—punishment 480
2507 Contempt—costs 481

Division 2.18.17 Enforcement—arrest warrants for absconding defendants

2550 Application—div 2.18.17 481
2551 Meaning of *plaintiff* and *defendant*—div 2.18.17 481
2552 Arrest warrant for defendant—application 482
2553 Arrest warrant for defendant—issue 482
2554 Arrest warrant for defendant—enforcement 483
2555 Arrest warrant for defendant—costs of enforcement 483
2556 Arrest warrant for defendant—service of warrant and claim 484
2557 Arrest warrant for defendant—record of enforcement 484
2558 Arrest warrant for defendant—procedure after arrest 484
2559 Arrest warrant for defendant—release of defendant 485
2560 Arrest warrant for defendant—court powers 485
2561 Arrest warrant for defendant—failure to comply with conditions 487
2562 Arrest warrant for defendant—review 488
2563 Arrest warrant for defendant—restriction on further applications 488
2564 Arrest warrant for defendant—costs 489

Part 2.19 Interpleader proceedings

Division 2.19.1 Stakeholder's interpleader

2600 Interpleader—application by stakeholder 490

Division 2.19.2 Enforcement officer's interpleader

2605 Interpleader—notice of claim to enforcement officer 491
2606 Interpleader—failure to give notice of claim 491
2607 Interpleader—notice to enforcement creditor 492
2608 Interpleader—admission of claim 493
2609 Interpleader—enforcement officer's interpleader application 494
2610 Interpleader—enforcement debtor's rights not affected 494

Division 2.19.3 Interpleader orders

2620 Interpleader—orders 495
2621 Interpleader—summary disposal of proceeding 496

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
2622 Interpleader—adverse claims 496
2623 Interpleader—default by claimant 496
2624 Interpleader—neutrality of applicant 497
2625 Interpleader order—2 or more proceedings 497
2626 Interpleader—trial 497
2627 Interpleader—disposal of amounts in court 498

Part 2.20 Trusts, estates, accounts and inquiries

Division 2.20.1 Trusts and estates generally
2700 Trusts and estates—decision without order for administration 499
2701 Trusts and estates—application not to affect powers 499
2702 Trusts and estates—conduct of sale 500

Division 2.20.2 Taking of accounts
2720 Meaning of *accounting party*—div 2.20.2 500
2721 Account—order for account 500
2722 Account—orders 501
2723 Accounts—service of order etc 502
2724 Accounts—form and verification 503
2725 Accounts—filing and service 503
2726 Accounts—challenging account 503
2727 Accounts—witness 504
2728 Accounts—allowances 504
2729 Accounts—delay 504
2730 Accounts—powers exercisable on taking account 504
2731 Accounts—class interests 505
2732 Accounts—reference to judicial officer 505
2733 Accounts—certificate about taking of account 506
2734 Accounts—further consideration 507

Division 2.20.3 Making of inquiries
2740 Inquiries—procedure for inquiries 507
2741 Inquiries—orders 507

Division 2.20.4 Executors, administrators and trustees—accounts and commission
2745 Definitions—div 2.20.4 508

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

2746 Estate and trust accounts—order requiring examination and passing of accounts 508
2747 Estate and trust accounts—compliance with order for examination and passing of accounts 509
2748 Estate and trust accounts—application for commission 510
2749 Estate and trust accounts—notice of filing of accounts etc 510
2750 Estate and trust accounts—appearance of beneficiary at examination 511
2751 Estate and trust accounts—examination 512
2752 Estate and trust accounts—conduct of examination 513
2753 Estate and trust accounts—application for passing accounts etc 514
2754 Estate and trust accounts—passing of accounts etc 515
2755 Estate and trust accounts—amended or further accounts 515
2756 Estate and trust accounts—renewal of objection in subsequent proceeding 515
2757 Estate and trust accounts—evidence in subsequent proceeding 516
2758 Estate and trust accounts—general practice to apply 516
2759 Estate and trust accounts—combined executors' and trustees' account 516
2760 Trustees—allowance of commission in proceeding 517

Part 2.21 Representation by solicitors

2800 Power to act by solicitor 518
2801 Appointment of solicitor 518
2802 Change between acting personally and acting by solicitor 518
2803 Change of solicitor 519
2804 Removal of solicitor by court 520
2805 Solicitor removed from roll etc 520
2806 Application for leave to withdraw as solicitor 521
2807 Leave to withdraw as solicitor 522
2808 Effect of removal of, or leave to withdraw as, solicitor 523
2809 Withdrawal of solicitor's agent 523
2810 Solicitor not to act for adverse parties 524

Part 2.22 Miscellaneous—ch 2

2900 Declaratory order 525
2901 Copies of documents from registrar 525

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
2902 Searches of registers etc 526
2903 Inspection of registry files 526

Chapter 3 Particular civil proceedings

Part 3.1 Administration and probate

Division 3.1.1 Administration and probate—general

3000 Definitions—pt 3.1 530
3001 Terms used in Administration and Probate Act 530
3002 Application—pt 3.1 530

Division 3.1.2 Application for grant of representation

3005 Grant of representation—application 531
3006 Grant of representation—notice of intention to apply to be published in newspaper etc 533
3007 Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin 534
3008 Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin 535
3009 Grant of representation—when notice of intention to apply to be served on public trustee and guardian 536
3010 Grant of representation—supporting affidavit for application 537
3011 Grant of representation—affidavit of search 542
3012 Grant of representation—proof of identity and death 542
3013 Grant of representation—further evidence, documents and notices 543
3014 Grant of representation—no grant to executor etc who has renounced 543
3015 Grant of representation—when hearing not required 543

Division 3.1.3 Application for reseal of foreign grant

3020 Reseal of foreign grant—application 543
3021 Reseal of foreign grant—notice of intention to apply to be published in newspaper etc 544
3022 Reseal of foreign grant—supporting affidavit for application 545
3023 Reseal of foreign grant—affidavit of search 547
3024 Reseal of foreign grant—when hearing required 547

Division 3.1.4 Validity and form of wills

3030 Grant of representation—evidence of proper attestation of will 548

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

3031 Grant of representation—will by blind or illiterate person 548
3032 Grant of representation—alterations in will 549
3033 Grant of representation—documents mentioned in or attached to will 550
3034 Grant of representation—evidence of proper execution of will etc 551
3035 Grant of representation—will inoperative or partly inoperative 551

Division 3.1.5 Administration bonds

3045 Administration bond—requirement for bond 552
3046 Administration bond—dispensing with bond 553
3047 Administration bond—affidavit of justification 554
3048 Administration bond—exempt surety 555
3049 Administration bond—addition or reduction after required but before given 555
3050 Administration bond—addition or reduction after given 556
3051 Administration bond—proceeding on bond 557
3052 Administration bond—application by surety 557
3053 Administration bond—reseal of foreign grant 557

Division 3.1.6 Administration by public trustee and guardian

3055 Administration by public trustee and guardian—application 558
3056 Administration by public trustee and guardian—renunciation of probate by executors 558
3057 Administration by public trustee and guardian—renunciation of letters of administration by entitled people 559
3058 Administration by public trustee and guardian—service of documents on public trustee and guardian 559

Division 3.1.7 Caveats

3065 Definitions—div 3.1.7 560
3066 Caveat—filing 560
3067 Caveat—service 562
3068 Caveat—period of operation 562
3069 Caveat—setting aside 562
3070 Caveat—withdrawal if no pending proceeding for grant of representation etc 564
3071 Caveat—leave to withdraw 564
3072 Caveat—effect if filed on day of grant 564

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 3.1.8 Revocation of grant

3080 Revocation of grant—urgent order before start of proceeding 565
3081 Revocation of grant—application 566
3082 Revocation of grant—orders 566
3083 Revocation of grant—return of original grant 566

Division 3.1.9 Other probate proceedings

3090 Definitions—div 3.1.9 567
3091 Application—div 3.1.9 567
3092 Division 3.1.9 proceeding—starting 568
3093 Division 3.1.9 proceeding—application for revocation 569
3094 Division 3.1.9 proceeding—affidavits 569
3095 Division 3.1.9 proceeding—affidavits of scripts 570
3096 Division 3.1.9 proceeding—directions for notice to people with beneficial interests 571
3097 Division 3.1.9 proceeding—notice of intention to intervene 571
3098 Division 3.1.9 proceeding—filing of grant of representation 571

Division 3.1.10 Administration and probate—other provisions

3110 Administration and probate—registrar may make inquiries 572
3111 Administration and probate—subpoenas 572
3112 Administration and probate—evidence about domicile 573
3113 Administration and probate—proof in solemn form 573
3114 Failure of executor to prove will—Administration and Probate Act, s 25 574
3115 Failure by executor, administrator or trustee to comply with beneficiary's request etc 575
3116 Grant of administration—grant to child 576
3117 Order about administration of real estate—Administration and Probate Act, s 51 576
3118 Assessment of costs—Administration and Probate Act, s 71 577
3119 Administration and probate book 577
3120 Proved wills to be kept by court 578

Part 3.2 Adoption

Division 3.2.1 Adoption—general

3150 Definitions—pt 3.2 579
3151 Terms used in Adoption Act 580

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

3152 Application—pt 3.2 580

Division 3.2.2 Adoption orders

3155 References to *applicants*—div 3.2.2 580

3156 Adoption order—application 581

3157 Adoption order—supporting affidavit for application 581

3158 Adoption order—documents accompanying application 584

3159 Adoption order—service of application on CYP director-general 586

3160 Adoption order—notice of intention to oppose 586

Division 3.2.3 Orders for dispensing with consent to adoption

3170 Dispensing order—application 587

3171 Dispensing order—service of application 588

3172 Dispensing order—notice of intention to oppose 588

Division 3.2.4 Amendment of adoption order

3180 Amendment order—application 589

3181 Amendment order—service of application 589

3182 Amendment order—notice of intention to oppose 589

Division 3.2.5 Discharge of interim orders and adoption orders

3190 Discharging order—application 590

3191 Discharging order—service of application 590

3192 Discharging order—notice of intention to oppose 590

Division 3.2.6 Access to identifying information

3200 Order for access to identifying information—application 591

3201 Order for access to identifying information—service of application 591

3202 Order for access to identifying information—notice of intention to oppose 591

Division 3.2.7 Adoption proceedings—general procedures

3210 Adoption proceedings—service of applications 592

3211 Adoption proceedings—service of documents containing identifying information 592

Part 3.3 Commercial arbitration

Division 3.3.1 Commercial arbitration—general

3250 Meaning of *Commercial Arbitration Act*—pt 3.3 594

3251 Terms used in Commercial Arbitration Act 594

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

3252 Commercial arbitration—application 595
3253 Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 34A 595
3255 Commercial arbitration—application under Commercial Arbitration Act, s 27J 596
3256 Commercial arbitration—application for order under Commercial Arbitration Act, s 34 (1) 596
3257 Commercial arbitration—offers of compromise 597
3258 Commercial arbitration—examination of witnesses 597
3259 Commercial arbitration—decision to refuse to issue interim measure 598
3260 Commercial arbitration—application to enforce arbitral award 598
3261 Commercial arbitration—evidence of arbitral award for purposes of enforcement 598
3262 Commercial arbitration—endorsement and service of application for enforcement 599

Division 3.3.2 Commercial arbitration—payment into court

3263 Commercial arbitration—payment into court 599
3264 Payment into court—costs 600
3265 Payment into court—bond or security 600
3266 Payment into court—interest up to payment 601
3267 Payment into court—acceptance 601
3268 Payment into court—costs on acceptance by claimant 602
3269 Payment into court—payment out of remaining amount 602
3269A Payment into court—nondisclosure 602

Part 3.4 Corporations Act and ASIC Act

3270 Rules for proceedings under Corporations Act or ASIC Act 603

Part 3.5 Cross-vesting

3300 Definitions—pt 3.5 604
3301 Terms used in Cross-vesting Act 604
3302 Application—pt 3.5 604
3303 Cross-vesting—application for transfer or removal of proceedings 605
3304 Cross-vesting—application by Attorney-General 605
3305 Cross-vesting—removal of proceedings 605
3306 Cross-vesting—relying on jurisdiction under cross-vesting laws 606

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

3307 Cross-vesting—service 606
3308 Cross-vesting—directions 607
3309 Cross-vesting—procedure following transfer of proceeding from court 608
3310 Cross-vesting—procedure following transfer of proceeding to court 608
3311 Cross-vesting—application of another jurisdiction's written law 609
3312 Cross-vesting—application of another jurisdiction's rules of evidence and procedure 609

Part 3.6 Electoral matters

Division 3.6.1 Electoral matters—general

3350 Definitions—pt 3.6 610
3351 Terms used in Electoral Act 610
3352 Application—pt 3.6 611
3353 Election application etc originating application 611

Division 3.6.2 Disputed elections

3355 Disputed election—deposit as security for costs 612
3356 Disputed election—public notice of election application 612
3357 Disputed election—parties to proceeding 612
3358 Disputed election—public notice of intention to make application for leave to withdraw 613
3359 Disputed election—particulars of contested ballot papers 613
3360 Disputed election—countercharges 614
3361 Disputed election—time of trial etc 615
3362 Disputed election—substitution of plaintiff 615
3363 Disputed election—withdrawal of defendant 616
3364 Disputed election—substitution of defendant 616

Division 3.6.3 Questions referred by Legislative Assembly

3400 Question referred—parties to proceeding 616

Division 3.6.4 Electoral matters—general procedure

3405 Electoral matters—better particulars 617

Part 3.7 Foreign and interstate confiscation orders—registration

Division 3.7.1 Foreign confiscation orders—registration

3450 Definitions—div 3.7.1 618

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
3451 Application—div 3.7.1 618
3452 Foreign confiscation orders—register 618
3453 Foreign confiscation orders—registration 619
3454 Foreign confiscation orders—proceedings for registration 619
3455 Foreign confiscation orders—when registration cancelled 621

Division 3.7.2 Interstate confiscation orders—registration

3460 Definitions—div 3.7.2 621
3461 Interstate confiscation orders—register 621
3462 Interstate confiscation orders—registration 622
3463 Interstate confiscation orders—proceedings for registration 622
3464 Interstate confiscation orders—when registration cancelled 623
3465 Interstate confiscation orders—filing of amendments etc 623

Part 3.8 Foreign judgments—reciprocal enforcement

3470 Definitions—pt 3.8 624
3471 Terms used in Foreign Judgments Act 624
3472 Application—pt 3.8 624
3473 Foreign judgment—application for registration 625
3474 Foreign judgment—evidence in support of application for registration 625
3475 Foreign judgment—security for costs of application for registration 627
3476 Foreign judgment—order for registration 627
3477 Foreign judgment—register 627
3478 Foreign judgment—registration 628
3479 Foreign judgment—notice of registration 629
3480 Notice of registration—affidavit of service to be filed 629
3481 Registration of judgment—application to set aside 629
3482 Foreign judgment—enforcement 630
3483 Australian judgment—certificate for foreign registration 630

Part 3.9 Habeas corpus

3500 Definitions—pt 3.9 632
3501 Application—pt 3.9 632
3502 Habeas corpus—writs of habeas corpus abolished 632
3503 Habeas corpus—order instead of writ of habeas corpus 632
3504 Habeas corpus—application and service 633

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
3505 Habeas corpus—parties 633
3506 Habeas corpus—procedure on application etc 634
3507 Habeas corpus—return of order 635

Part 3.10 Judicial review

3550 Definitions—pt 3.10 637
3551 Terms defined in Judicial Review Act 638
3552 Application—pt 3.10 638
3553 Judicial review—prerogative writs etc abolished 639
3554 Judicial review—relief previously granted by prerogative writ etc 639
3555 Judicial review—other jurisdiction not excluded 640
3556 Judicial review—application etc 640
3557 Judicial review—time for starting proceeding 642
3558 Judicial review—declaration or injunction 643
3559 Judicial review—other prerogative relief etc 643
3560 Judicial review—additional orders 644
3561 Judicial review—application for statutory order of review and prerogative relief etc 645
3562 Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review 645
3563 Judicial review—filing and serving statements 646
3564 Judicial review—stay or dismissal of application for statutory order of review on return date 647
3565 Judicial review—directions on return date 647
3566 Judicial review—power of the court to stay or dismiss applications in certain circumstances 649
3567 Judicial review—additional requirements for certiorari order 650
3568 Judicial review—no proceeding in relation to things done under mandamus order 650
3569 Judicial review—disclaimer in relation to quo warranto order 650
3570 Judicial review—proceeding in relation to statement of reasons 651

Part 3.11 Legal profession

Division 3.11.1 Legal profession—general

3600 Definitions—pt 3.11 653
3601 Terms used in Legal Profession Act 654

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

3602 Application—pt 3.11 654

Division 3.11.2 Admission of local lawyers

Subdivision 3.11.2.1 Academic qualifications

3605 Admission—approved academic qualifications—Legal Profession Act, s 21 (5) 654

Subdivision 3.11.2.2 Approval of academic institutions

3606 Approved academic institutions 656

3607 Monitoring and review 656

Subdivision 3.11.2.3 Approval of course of study

3607A Approval of course of study 657

3607B Approval of subjects 658

3607C Changes to approved courses of study 659

Subdivision 3.11.2.4 Practical legal training

3607D Practical legal training 660

Subdivision 3.11.2.5 Practical legal training providers and courses

3607E Approval of PLT providers 660

3607F Monitoring and review of approved PLT provider 661

3607G Approval of training course 662

3607H Changes to approved courses of study 662

Subdivision 3.11.2.6 Admission—application and related matters

3608 Admission—application for admission 663

3609 Admission—when application must be made 665

3610 Admission—compliance certificate (Legal Profession Act, s 30 (2)) 665

3611 Admission—objection by bar council or law society council 665

3612 Admission—appearance by bar council or law society council 666

3613 Admission—applicant's duty of frankness 666

3614 Admission—oath or affirmation 666

3615 Admission—entry on local roll 667

Division 3.11.3 Assessment of client costs

3620 Application—div 3.11.3 667

3621 Form of application 667

3622 Application for leave to apply out of time 668

3623 Directions 668

3624 Response to application 668

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
3625 Notice of objections to legal costs 669

Part 3.12 Family violence and personal violence proceedings

Division 3.12.1 Family violence and personal violence proceedings—general

3800 Terms used in Family Violence Act and Personal Violence Act 670
3801 Application—pt 3.12 670
3802 Rules in ch 2 disapplied 670
3803 Other disapplied rules 672
3804 Correction of name of respondent 673

Part 3.13 Workers compensation

Division 3.13.1 Workers compensation proceedings—general

3900 Definitions—pt 3.13 674
3901 Terms used in Workers Compensation Act 675
3902 Application—pt 3.13 675
3903 Workers compensation proceedings—application of ch 2 generally 675

Division 3.13.2 Workers compensation—applications for arbitration

3904 Application for arbitration—Commercial Arbitration Act not apply 677
3905 Application for arbitration—by worker 677
3906 Application for arbitration—by dependant or estate of deceased worker 677
3907 Application for arbitration—by employer or insurer 678
3909 Application for arbitration—injury notice and medical evidence 678
3910 Application for arbitration—copies 679
3911 Application for arbitration—service on respondent 679
3912 Application for arbitration—service on insurer 679
3913 Application for arbitration—answer by respondent or third-party respondent 680
3914 Application for arbitration—liability and particulars subject to answer 680
3915 Application for arbitration—service of answer 681
3916 Application for arbitration—amendment 681
3917 Application for arbitration—minor amendment or amendment by consent 682
3918 Application for arbitration—discontinuance 683

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 3.13.3 Workers compensation—parties for arbitration

3919 Arbitration—necessary parties 684
3919A Arbitration—determination of Territory or State of connection 684
3920 Arbitration—including other parties 685
3921 Arbitration—person may apply to be included as party 686
3922 Arbitration—party may apply to be removed as party 686
3923 Arbitration—employer not respondent in certain applications by dependant or personal representative 686

Division 3.13.4 Workers compensation—representation in arbitrations

3924 Arbitration—party may be represented 687
3925 Arbitration—separate representation of employer for insurer's period on risk 688

Division 3.13.6 Workers compensation—medical reports for arbitrations

3928 Arbitration—service of medical reports 688
3929 Arbitration—supplementary medical reports 689
3930 Arbitration—doctor's evidence to be covered by medical report 690
3931 Arbitration—medical reports admissible as evidence of opinion etc 690
3932 Arbitration—requiring attendance of doctor for cross-examination etc 690
3933 Arbitration—tender of medical report 691

Division 3.13.7 Workers compensation—medical referees for arbitrations

3934 Arbitration—party may apply for medical referee etc 691
3935 Arbitration—number of medical referees 692
3936 Arbitration—notice of request to medical referee 692
3937 Arbitration—assessment of worker by medical referee 692
3938 Arbitration—medical referee to review medical evidence etc 692
3939 Arbitration—medical referee's report 693
3940 Arbitration—medical referee's report to be given to parties 694
3941 Arbitration—court may decide claim without medical referee report 694

Division 3.13.8 Workers compensation—dispute resolution conference for arbitration

3942 Meaning of *dispute resolution conference*—div 3.13.8 694
3943 Dispute resolution conference—purpose 695
3944 Conciliator for dispute resolution conference—div 3.13.8 695

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
3945	Dispute resolution conference—listings etc	695
3946	Dispute resolution conference—requirement to attend	696
3947	Dispute resolution conference—time	697
3948	Dispute resolution conference—information to be provided before conference	697
3948A	Dispute resolution conference—confidentiality	697
3948B	Dispute resolution conference—settlement must be in writing	698
3948C	Dispute resolution conference—court orders on outcome of conference	698
Division 3.13.9	**Workers compensation—conduct of arbitration**	
3949	Conduct of arbitration—date	699
3950	Conduct of arbitration—burden of proof on party asserting fact	699
3951	Conduct of arbitration—directions about third-party respondents	700
3952	Conduct of arbitration—directions and orders if remedy against employer and stranger	700
3953	Conduct of arbitration—directions generally	702
Division 3.13.10	**Workers compensation—submission to award and payments into court**	
3954	Arbitration—payment into court generally	702
3955	Arbitration—admission of liability to claim by worker	703
3956	Arbitration—admission of liability to claim for deceased worker	703
3957	Arbitration—denial and submission to award or payment by employer	704
3958	Arbitration—acceptance of payment by worker	705
3959	Arbitration—acceptance of payment for deceased worker	705
3960	Arbitration—payment on worker's acceptance	705
3961	Arbitration—payment on dependant's etc acceptance	706
3962	Arbitration—no prompt acceptance of submission or payment	706
3963	Arbitration—award not greater than submission or payment	707
Division 3.13.11	**Workers compensation—awards**	
3964	Arbitration—award	708
3965	Arbitration—setting aside or amending award	709
Division 3.13.12	**Workers compensation—registered agreements**	
3966	Registered agreement—application for registration	710
3967	Registered agreement—application for amendment or cancellation	711

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 3.13.13 Workers compensation—costs

3968 Workers compensation costs—generally 711

3969 Workers compensation costs—claim against arbitration award 712

Division 3.13.14 Workers compensation—appeals

3970 Appeal—order of Supreme Court 713

Chapter 4 Criminal proceedings

Part 4.1 Criminal proceedings—general

Division 4.1.1 Criminal proceedings—application of ch 2

4000 Criminal proceedings—application of expert witness code of conduct 714

Division 4.1.2 Criminal proceedings—service

4005 Meaning of *accused person* for div 4.1.2—bail applications 714

4006 Criminal proceedings—application of pt 6.8 715

4007 Criminal proceedings—service on accused person by filing if no address for service 715

4008 Criminal proceedings—service if no-one found at accused person's address for service 716

4009 Criminal proceedings—service of documents when unrepresented accused person in custody 716

Division 4.1.3 Criminal proceedings—enforcement

4020 Criminal proceedings—failure of individual to comply with subpoena etc 717

4021 Criminal proceedings—failure of corporation to comply with subpoena etc 718

Division 4.1.4 Criminal proceedings—other provisions

4050 Criminal proceedings—production of person in custody 719

4051 Criminal proceedings—defence response to prosecutor's opening address 720

4052 Criminal proceedings—execution of documents 720

4053 Criminal proceedings—inspection of registry files 720

4054 Criminal proceedings—certificate of conviction 723

4055 Criminal proceedings—preparation of judgments 723

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 4.2 Magistrates Court criminal proceedings

Division 4.2.1 Magistrates Court criminal proceedings—preliminary

4300 Definitions—pt 4.2 724

4301 Application—pt 4.2 724

Division 4.2.1A Magistrates Court criminal proceedings—prosecution evidence in committal proceedings

4305 Prosecution evidence to be given to accused etc—Magistrates Court Act, s 90 724

Division 4.2.2 Magistrates Court criminal proceedings—setting aside orders

4310 Magistrates Court order made in absence of party may be set aside—general 725

4311 Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence 725

4312 Magistrates Court order made in absence of party may be set aside—other offences 726

4313 Magistrates Court conviction made in absence of party set aside—warrant may be set aside 727

4314 Magistrates Court conviction made in absence of party set aside—hearing 727

4315 Magistrates Court order made in absence of party may be set aside—application by informant 728

Division 4.2.3 Magistrates Court criminal proceedings—witnesses

4330 Magistrates Court witness—informant may request attendance 729

4331 Magistrates Court witness—expenses 729

Part 4.3 Supreme Court criminal proceedings

Division 4.3.1 Supreme Court criminal proceedings—preliminary

4700 Definitions—pt 4.3 730

4701 Application—pt 4.3 731

Division 4.3.2 Supreme Court criminal proceedings—representation

4705 Meaning of *criminal proceeding*—div 4.3.2 731

4706 Supreme Court criminal proceedings—notice of solicitor acting 732

4707 Supreme Court criminal proceedings—change of solicitor 732

4708 Supreme Court criminal proceedings—removal of solicitor by court 733

4709 Supreme Court criminal proceedings—solicitor removed from roll etc 734

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

4710 Supreme Court criminal proceedings—solicitor's instructions to act for accused person ended 734

4711 Supreme Court criminal proceedings—withdrawal of solicitor 735

4712 Supreme Court criminal proceedings—handing over depositions 736

Division 4.3.3 Supreme Court criminal proceedings—bail

4720 Meaning of *accused person*—div 4.3.3 737

4721 Supreme Court bail application in relation to accused person 737

4722 Supreme Court bail application by informant 740

4723 Supreme Court application for bail by unrepresented accused person 740

4724 Prosecution application for review of bail decision 741

Division 4.3.4 Supreme Court criminal proceedings—pre-trial procedure

4730 Application—div 4.3.4 742

4731 Supreme Court criminal proceedings—appearance of accused person 742

4732 Supreme Court criminal proceedings—appearance when committed for sentence 742

4733 Supreme Court criminal proceedings—appearance when committed for trial 743

4734 Supreme Court criminal proceedings—pre-trial questionnaire 744

4735 Supreme Court criminal proceedings—completion of pre-trial questionnaire 745

4735A Supreme Court criminal proceedings—registrar's directions hearing 745

4736 Supreme Court criminal proceedings—arraignment 746

4737 Supreme Court criminal proceedings—pre-trial directions hearing 746

4738 Supreme Court criminal proceedings—directions 747

4739 Supreme Court criminal proceedings—proceeding already being managed by court 748

Division 4.3.5 Supreme Court criminal proceedings—pre-trial applications

4750 Supreme Court criminal proceedings—application to set aside or stay proceeding 748

4751 Supreme Court criminal proceedings—application for separate trials 749

4752 Supreme Court criminal proceedings—other pre-trial applications 749

4753 Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752 750

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 4.4 Forensic proceedings

Division 4.4.1 Forensic proceedings—preliminary

4800 Definitions—pt 4.4 752
4801 Forensic proceedings—application of applied civil rules 752
4802 Forensic proceedings—application of applied criminal rules 753

Division 4.4.2 Forensic proceedings under the Act, pt 2.5 and the Crimes Act, pt 1D, div 5

4803 Application—div 4.4.2 753
4804 Forensic proceedings—filing of application 754
4805 Forensic proceedings—personal service 754

Division 4.4.3 Forensic proceedings under the Act, pt 2.7 and the Crimes Act, pt 1D, div 6A

4806 Application—div 4.4.3 754
4807 Forensic proceedings—application and service 755

Division 4.4.4 Forensic proceedings—general

4808 Forensic proceedings—application not served in time 756
4809 Forensic proceedings—filing and service of supporting affidavit 756
4810 Forensic proceedings—costs 757

Chapter 5 Appellate proceedings

Part 5.1 Appellate proceedings—preliminary

5000 Definitions—ch 5 758
5001 Appellate proceedings—application of ch 2 generally 758

Part 5.2 Appeals from registrar

5010 Definitions—pt 5.2 760
5011 Application—pt 5.2 760
5012 Appeals from registrar—starting appeal 760
5013 Appeals from registrar—requirements for notice of appeal 760
5014 Appeals from registrar—time for filing notice of appeal 761
5015 Appeals from registrar—notice of appeal to be sealed 762
5016 Appeals from registrar—serving notice of appeal 762
5017 Appeals from registrar—stay and reinstatement 762

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 5.3 Appeals to Supreme Court

Division 5.3.1 Appeals to Supreme Court—preliminary

5050 Definitions—pt 5.3 764
5051 Application—pt 5.3 765
5052 Appeals to Supreme Court—general powers 766
5053 Appeals to Supreme Court—non-publication order 767
5054 Appeals to Supreme Court—stay and reinstatement 768
5055 Appeals to Supreme Court—security for costs 770

Division 5.3.2 Appeals to Supreme Court—leave to appeal

5070 Application—div 5.3.2 770
5071 Appeals to Supreme Court—application for leave to appeal 770
5072 Appeals to Supreme Court—time for filing application for leave to appeal 771
5073 Appeals to Supreme Court—application for leave to appeal to be sealed 772
5074 Appeals to Supreme Court—serving application for leave to appeal 772
5075 Appeals to Supreme Court—notice of intention to respond to application for leave to appeal 773
5076 Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal 773

Division 5.3.3 Appeals to Supreme Court—leave to appeal out of time

5080 Meaning of *out of time*—div 5.3.3 774
5081 Application—div 5.3.3 774
5082 Appeals to Supreme Court—application for leave to appeal out of time 774
5083 Appeals to Supreme Court—filing application for leave to appeal out of time 775
5084 Appeals to Supreme Court—application for leave to appeal out of time to be sealed 775
5085 Appeals to Supreme Court—serving application for leave to appeal out of time 775
5086 Appeals to Supreme Court—notice of intention to respond to application for leave to appeal out of time 776
5087 Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal out of time 777

Division 5.3.4 Appeals to Supreme Court—procedure generally

5100 Appeals to Supreme Court—starting appeal 777

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
5101	Appeals to Supreme Court—requirements for notice of appeal etc	777
5102	Appeals to Supreme Court—parties to appeal	779
5103	Appeals to Supreme Court—time for filing notice of appeal	780
5104	Appeals to Supreme Court—notice of appeal to be sealed	781
5105	Appeals to Supreme Court—numbering etc of appeals	781
5106	Appeals to Supreme Court—date for settlement of appeal papers	782
5107	Appeals to Supreme Court—serving notice of appeal	782
5108	Appeals to Supreme Court—notice of intention to respond	783
5109	Appeals to Supreme Court—respondent taken to be served by filing notice of intention to respond	784
5110	Appeals to Supreme Court—documents	784
5111	Appeals to Supreme Court—amending notice of appeal	786
5112	Appeals to Supreme Court—cross-appeal	787
5113	Appeals to Supreme Court—application of certain rules to cross-appeals	789
5114	Appeals to Supreme Court—effect of failure to give notice of cross-appeal	790
5115	Appeals to Supreme Court—notice of contention	790
Division 5.3.5	**Appeals to Supreme Court—appeal papers and hearing**	
5130	Appeals to Supreme Court—draft index of appeal papers	792
5131	Appeals to Supreme Court—settlement of appeal papers	792
5132	Appeals to Supreme Court—content of appeal papers	793
5133	Appeals to Supreme Court—presentation of appeal papers	794
5134	Appeals to Supreme Court—filing and serving appeal papers	794
5135	Appeals to Supreme Court—setting appeal for hearing	795
5136	Appeals to Supreme Court—changing appeal hearing date	795
5137	Appeals to Supreme Court—written summary and list for appeal hearing	796
5138	Appeals to Supreme Court—summaries of arguments	796
5139	Appeals to Supreme Court—list of authorities, legislation and texts	797
5140	Appeals to Supreme Court—absence of party	798
5141	Appeals to Supreme Court—insufficient material	799
Division 5.3.6	**Appeals to Supreme Court—ending all or part of appeal**	
5170	Appeals to Supreme Court—abandonment of ground of appeal	800

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

5171 Appeals to Supreme Court—discontinuance of appeal 800
5172 Appeals to Supreme Court—competency of appeal 802
5173 Appeals to Supreme Court—costs for failure to apply for appeal to be struck out as incompetent 802
5174 Appeals to Supreme Court—dismissal by consent 803
5175 Appeals to Supreme Court—consent orders 804

Division 5.3.7 Appeals to Supreme Court—miscellaneous

5190 Appeals to Supreme Court—directions about appeal etc 804
5191 Appeals to Supreme Court—want of prosecution of appeal 805
5192 Appeals to Supreme Court—matter happening in court or tribunal appealed from 806
5193 Further evidence on appeal to Supreme Court—Magistrates Court Act 1930, s 214 807
5194 Appeals to Supreme Court—keeping exhibits 808

Part 5.4 Appeals to Court of Appeal

Division 5.4.1 Appeals to Court of Appeal—preliminary

5300A Definitions—pt 5.4 809
5300 Meaning of *court*—pt 5.4 809
5301 Appeals to Court of Appeal—stay and reinstatement 809
5302 Appeals to Court of Appeal—security for costs 811

Division 5.4.2 Appeals to Court of Appeal—leave to appeal from interlocutory orders

5310 Application—div 5.4.2 811
5311 Appeals to Court of Appeal—application for leave to appeal 811
5312 Appeals to Court of Appeal—time for filing application for leave to appeal 812
5313 Appeals to Court of Appeal—application for leave to appeal to be sealed 812
5314 Appeals to Court of Appeal—serving application for leave to appeal 812
5315 Appeals to Court of Appeal—response to application for leave to appeal 813

Division 5.4.3 Appeals to Court of Appeal—leave to appeal out of time from final judgments

5330 Definitions—div 5.4.3 814
5331 Application—div 5.4.3 814

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
5332	Appeals to Court of Appeal—application for leave to appeal out of time	815
5333	Appeals to Court of Appeal—filing application for leave to appeal out of time	815
5334	Appeals to Court of Appeal—application for leave to appeal out of time to be sealed	815
5335	Appeals to Court of Appeal—serving application for leave to appeal out of time	816
5336	Appeals to Court of Appeal—response to application for leave to appeal out of time	816
Division 5.4.4	**Appeals to Court of Appeal—procedure generally**	
5400	Definitions—divs 5.4.4 to 5.4.6	818
5400A	Meaning of *case summary*—div 5.4.4	819
5401	Application—divs 5.4.4 to 5.4.6	819
5402	Appeals to Court of Appeal—starting appeal	819
5403	Appeals to Court of Appeal—requirements for notice of appeal etc	819
5404	Appeals to Court of Appeal—parties to appeal	821
5405	Appeals to Court of Appeal—time for filing notice of appeal and case summary	822
5406	Appeals to Court of Appeal—notice of appeal to be sealed	823
5407	Appeals to Court of Appeal——numbering etc of appeals	823
5408	Appeals to Court of Appeal—date for settlement of appeal papers	823
5409	Appeals to Court of Appeal—serving notice of appeal and case summary	823
5410	Appeals to Court of Appeal—notice of intention to respond	825
5411	Appeals to Court of Appeal—respondent taken to be served by filing notice of intention to respond	825
5412	Appeals to Court of Appeal—amending notice of appeal	825
5413	Appeals to Court of Appeal—cross-appeal	826
5414	Appeals to Court of Appeal—application of certain rules to cross-appeals	828
5415	Appeals to Court of Appeal—effect of failure to give notice of cross-appeal	829
5416	Appeals to Court of Appeal—notice of contention	829
Division 5.4.5	**Appeals to Court of Appeal—appeal papers and hearing**	
5432	Appeals to Court of Appeal—settlement of appeal papers	831

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

5436 Appeals to Court of Appeal—setting appeal for hearing 832
5437 Appeals to Court of Appeal—changing appeal hearing date 832
5441 Appeals to Court of Appeal—absence of party 833
5442 Appeals to Court of Appeal—insufficient material 834

Division 5.4.6 Appeals to Court of Appeal—ending all or part of appeal

5470 Appeals to Court of Appeal—abandonment of ground of appeal 834
5471 Appeals to Court of Appeal—discontinuance of appeal 835
5472 Appeals to Court of Appeal—competency of appeal 836
5473 Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent 836
5474 Appeals to Court of Appeal—dismissal by consent 837
5475 Appeals to Court of Appeal—consent orders 838

Division 5.4.7 Appeals to Court of Appeal—convictions and sentences

Subdivision 5.4.7.1 Appeals to Court of Appeal—convictions and sentences preliminary

5500 Definitions—div 5.4.7 838

Subdivision 5.4.7.2 Appeals to Court of Appeal—leave to appeal out of time by convicted person

5505 Application—sdiv 5.4.7.2 839
5506 Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence 839
5507 Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence to be sealed 840
5508 Appeals to Court of Appeal—serving application for leave to appeal out of time against conviction or sentence 840
5509 Appeals to Court of Appeal—response by DPP to application for leave to appeal out of time against conviction or sentence 840
5510 Appeals to Court of Appeal—registrar's decision on application for leave to appeal out of time against conviction or sentence 841

Subdivision 5.4.7.3 Appeals to Court of Appeal—leave to appeal out of time by DPP

5520 Application of div 5.4.3 to certain appeals by DPP 842

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Subdivision 5.4.7.4 Appeals to Court of Appeal—convictions and sentences generally

5530 Appeals to Court of Appeal—treating application for leave to appeal out of time against conviction or sentence as appeal 842

5531 Appeals to Court of Appeal—grounds of appeal against conviction or sentence 843

5532 Appeals to Court of Appeal—trial judge's report for appeal against conviction or sentence 843

5533 Appeals to Court of Appeal—service if convicted person in custody and unrepresented 843

5534 Appeals to Court of Appeal—written case and presence if convicted person appellant 844

5535 Appeals to Court of Appeal—order for production of offender 845

5536 Appeals to Court of Appeal—fine paid to be kept pending appeal 846

5537 Appeals to Court of Appeal—solicitor's instructions to act for convicted person ended 847

5538 Appeals to Court of Appeal—solicitor wants to withdraw from acting for convicted person 848

5539 Appeals to Court of Appeal—notification of result of appeal against conviction etc 849

Division 5.4.8 Appeals to Court of Appeal—miscellaneous

5600 Appeals to Court of Appeal—power to amend proceedings in court below 850

5601 Appeals to Court of Appeal—expediting appeals etc 850

5602 Appeals to Court of Appeal—directions about appeal etc 850

5603 Appeals to Court of Appeal—want of prosecution of appeal 851

5604 When Court of Appeal may be constituted by single judge—Supreme Court Act 1933, s 37J (1) (h) 853

5605 Jurisdiction of Court of Appeal that may be exercised by single judge—Supreme Court Act 1933, s 37J (3) 854

5606 Appeals to Court of Appeal—further evidence on appeal 854

5607 Appeals to Court of Appeal—keeping exhibits 856

Part 5.5 Orders to review Magistrates Court decisions

5700 Meaning of *review order*—pt 5.5 857

5701 Review orders—application for order 857

5702 Review orders—affidavits 858

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

5703 Review orders—service of applications 858
5704 Review orders—parties 858
5705 Review orders—service of review order 858
5706 Review orders—notice of intention to respond to review order 859
5707 Review orders—security for costs 859
5708 Review orders—stay 860
5709 Review orders—non-appearance of applicant 861
5710 Review orders—application to revoke review order 861

Part 5.6 Reference appeals

Division 5.6.1 Reference appeals—Supreme Court

5750 Definitions—div 5.6.1 862
5751 Reference appeals to Supreme Court—application for reference appeal 862
5752 Reference appeals to Supreme Court—service of application etc for reference appeal 863
5753 Reference appeals to Supreme Court—notice of intention to respond by interested party 863
5754 Reference appeals to Supreme Court—discontinuance of reference appeal 864
5755 Reference appeals to Supreme Court—application of certain rules to reference appeals 864

Division 5.6.2 Reference appeals—Court of Appeal

5770 Definitions—div 5.6.2 866
5771 Reference appeals to Court of Appeal—application for reference appeal 867
5772 Reference appeals to Court of Appeal—service of application etc for reference appeal 867
5773 Reference appeals to Court of Appeal—notice of intention to respond by interested party 867
5774 Reference appeals to Court of Appeal—discontinuance of reference appeal 868
5775 Reference appeals to Court of Appeal—application of certain rules to reference appeals 868

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Page

Part 5.7 Special cases

Division 5.7.1 Questions referred—Supreme Court

5800	Application—div 5.7.1	870
5801	Definitions—div 5.7.1	871
5802	Question referred to Supreme Court—form	871
5803	Special case to Supreme Court—preparation and settling	872
5804	Special case to Supreme Court—person with legal disability	872
5805	Special case to Supreme Court—directions hearing	873
5806	Special case to Supreme Court—setting down for hearing	873
5807	Special case to Supreme Court—insufficient statement of case	873
5808	Special case to Supreme Court—court can draw inferences	874
5809	Special case to Supreme Court—agreement about damages and costs	874

Division 5.7.2 Questions referred—Court of Appeal

5830	Application—div 5.7.2	874
5831	Definitions—div 5.7.2	875
5832	Question referred to Court of Appeal—form	875
5833	Special case to Court of Appeal—preparation and settling	875
5834	Special case to Court of Appeal—setting down for hearing	876
5835	Special case to Court of Appeal—court can draw inferences	876
5836	Special case to Court of Appeal—agreement about damages and costs	876

Part 5.8 Written cases

5850	Definitions—pt 5.8	878
5851	Application of pt 5.8 to div 5.6.1 etc	879
5852	Written cases—when used	880
5853	Written cases—appellant wants written case	880
5854	Written cases—respondent wants written case	881
5855	Written cases—filing etc written case for application	882
5856	Written cases—filing etc written case for appeal	883
5857	Written cases—form	884
5858	Written cases—inspection	885

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Chapter 6 General rules for all proceedings

Part 6.1 Introductory provisions—ch 6

6000 Application—ch 6 886

Part 6.2 Applications in proceedings

6005 Definitions—pt 6.2 887
6006 Application—pt 6.2 887
6007 Application in proceeding—contents 888
6008 Application in proceeding—filing and service 890
6009 Application in proceeding—filing and service of supporting material 891
6010 Application in proceeding—absence of party 891
6011 Application in proceeding—dismissal or adjournment if application not served etc 892
6012 Application in proceeding—adjournment generally 892
6013 Application in proceeding—orders by consent without attendance 893
6014 Application in proceeding—further hearing 894
6015 Application in proceeding—application under r 40 894
6016 Application in proceeding—oral application 895

Part 6.2A Human rights proceedings

Division 6.2A.1 Preliminary

6020 Terms used in Human Rights Act 2004 896
6021 Application—pt 6.2A 896

Division 6.2A.2 Notice to Attorney-General and commission

6030 Application—div 6.2A.2 897
6031 Notice—human rights proceedings 897
6032 Notice—direction by court 898
6033 Contents of notice of human rights matter 898
6034 Directions hearing—human rights proceedings 899

Division 6.2A.3 Intervention of commission

6040 Human rights commissioner—application for leave to intervene 899

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 6.2B Intervention of Attorney-General in proceedings

6045 Attorney-General—notice of intervention 901

Part 6.3 Documents

Division 6.3.1 General provisions about documents for filing

6100 Application—div 6.3.1 902
6101 Documents—compliance with approved form 902
6102 Documents—general heading style 903
6103 Documents—layout etc 904
6104 Documents—use of copies 905
6105 Documents—use of figures 905
6106 Documents—signing 906
6107 Documents—alterations 906

Division 6.3.2 Filing documents

6120 Filing documents—number of copies 907
6121 How documents may be filed 908
6122 Filing documents personally 908
6123 Filing documents by post 908
6125 Practice notes about filing 910
6126 Date of filing 910

Division 6.3.3 Rejecting filed documents

6140 Rejecting documents—noncompliance with rules etc 911
6141 Rejecting documents—inconvenient address for service 912
6142 Rejecting documents—abuse of process etc 912
6143 Rejecting document—registrar to give notice etc 913
6144 Rejecting document—costs 913
6145 Filed documents initially rejected 914

Part 6.4 Associate judge

6200 Jurisdiction exercisable by associate judge 915
6201 Order that jurisdiction in proceeding be exercised by judge instead of associate judge 916
6202 Associate judge referring proceeding or issue to judge 916

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Part 6.5 Registrar

6250 Jurisdiction exercisable by registrar of Supreme Court 918
6251 Jurisdiction exercisable by registrar of Magistrates Court 923
6252 Registrar's powers—postponement of hearing 931
6253 Registrar's powers—subpoenas 931
6254 Order that jurisdiction in proceeding be exercised by judicial officer other than registrar 931
6255 Registrar referring proceeding or issue to judicial officer 932
6256 Appeals from registrar's orders etc 933

Part 6.6 Registry

6300 Office hours 935
6301 Registrar's duties 935
6302 Cause book 935
6303 Registrar to keep seals 936
6304 Documents—sealing and stamping 937
6305 Issue of commissions 937
6306 Duplicate sealed etc documents 937
6307 Delegation by registrar 937

Part 6.7 Time

6350 Time—certain days excluded in working out 939
6351 Time—extending and shortening by court order 939
6352 Time—fixing by court order 940

Part 6.8 Service

Division 6.8.1 Service—preliminary

6400 Application—pt 6.8 941
6401 Service of filed documents 942

Division 6.8.2 Personal service

6405 How document is personally served 942

Division 6.8.3 Service—Magistrates Court

6410 Application—div 6.8.3 943
6411 Service on individuals generally—Magistrates Court 943
6412 Service of originating process by post—Magistrates Court 944

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
6413 Doubtful service—Magistrates Court 945
Division 6.8.4 Ordinary service
6420 Ordinary service—address for service 946
6421 Service by filing 947
Division 6.8.5 Service—particular cases
6430 Service in Australia but outside ACT 947
6431 Service on corporations—generally 948
6432 Service on corporations—additional ways for all corporations 949
6433 Service of originating process on partnership 950
6434 Service on defendant operating under business name 951
6435 Service on children 952
6436 Service on people with mental disabilities 953
6437 Service on detainees 953
6438 Service if no-one found at party's address for service 954
6439 Service of originating application to recover unoccupied land 954
Division 6.8.6 Time of service
6450 Time of service at address for service 955
Division 6.8.7 Service—other
6460 Substituted service 956
6461 Informal service 957
6462 Service on agent 958
6463 Service under contract 958
6464 Acceptance of service by solicitor 959
6465 Special requirements for service by fax 959
6466 Email service—other matters 960
6467 Proof of service 961
6468 Identity of person served 963
6469 Change of address for service 963
Division 6.8.8 Service of subpoenas and notices instead of subpoenas—general
6480 Definitions—div 6.8.8 964
6481 Subpoena—service on solicitor 964
6482 Subpoena—service on special witness 964
6483 Special witness—notice instead of subpoena 966

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
6484 Special witness—no shortening of time for service 966
Division 6.8.9 Service out of Australia
6500 Meaning of *Australia*—div 6.8.9 966
6501 . 966
6502 Service of originating process without leave 967
6503 Service of originating process with leave 971
6504 Court's discretion whether to assume jurisdiction 972
6505 Notice to person served outside Australia 972
6506 Time for filing notice of intention to respond 973
6507 Leave to proceed if notice of intention to respond not filed 973
6508 Service of other documents outside Australia 973
6509 Mode of service 973
Division 6.8.11 Service of foreign legal process in the ACT
6540 Letter of request from foreign tribunal—procedure 974
6541 Orders for substituted service etc for div 6.8.11 975
6542 Noncompliance with div 6.8.11 975
Division 6.8.12 Service under the Hague Convention
Subdivision 6.8.12.1 Preliminary
6550 Definitions—div 6.8.12 976
6551 Rules under this division prevail 978
Subdivision 6.8.12.2 Service abroad of local judicial documents
6552 Application—subdiv 6.8.12.2 978
6553 Application for request for service abroad 978
6554 How application to be dealt with 980
6555 Procedure on receipt of certificate of service 981
6556 Payment of costs 982
6557 Evidence of service 983
Subdivision 6.8.12.3 Default judgment following service abroad of initiating process
6558 Application—subdiv 6.8.12.3 983
6559 Restriction on power to enter default judgment if certificate of service filed 983
6560 Restriction on power to enter default judgment if certificate of service not filed 985

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
6561 Setting aside default judgment 986

Subdivision 6.8.12.4 Local service of foreign judicial documents

6562 Application—subdiv 6.8.12.4 986
6563 Certain documents to be referred back to Attorney-General of the Commonwealth 987
6564 Service of foreign judicial documents etc 988
6565 Affidavit about service 989

Part 6.9 Subpoenas

6600 Definitions—pt 6.9 991
6601 Issuing subpoena 991
6601A Issuing subpoena to produce—originating claim 992
6601B Issuing subpoena to produce—originating application 993
6602 Form of subpoena 993
6603 Subpoena—leave to serve late 994
6603A Subpoena—change of date for attendance of production 996
6604 Setting aside subpoena or other relief 996
6605 Service of subpoena 997
6606 Compliance with subpoena 997
6607 Production of subpoenaed document etc otherwise than on attendance 998
6608 Removal, return, inspection etc of subpoenaed documents and things 999
6609 Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance 999
6610 Disposal of subpoenaed documents and things produced 1001
6611 Costs and expenses of compliance with subpoena 1002
6612 Failure to comply with subpoena—contempt of court 1003
6613 Documents and things in custody of court 1004
6614 Application of pt 6.9—subpoena under Commercial Arbitration Act 1004
6615 Subpoena issued by ACAT—leave to serve outside ACT 1005

Part 6.10 Evidence

Division 6.10.1 General—pt 6.10

6700 Way evidence given—civil proceedings 1007
6701 Evidence on affidavit by agreement—civil proceedings 1008

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
6702 Evidence in another civil proceeding etc 1008
6703 Evidence by telephone etc 1009
6704 Plans, photographs, video or audio recordings and models 1009

Division 6.10.2 Affidavits

6710 Affidavit—form 1010
6711 Affidavit—contents 1011
6712 Affidavit—annexures and exhibits 1012
6713 Affidavit—document included in 1014
6714 Affidavit—when may be taken 1014
6715 Affidavit—taking of 1014
6716 Affidavit—certificate of reading or signature for person making 1015
6717 Affidavit—alterations in 1017
6718 Affidavit—filing and service 1018
6719 Affidavit—irregular in form 1018
6720 Affidavit—scandalous matter etc 1019
6721 Affidavit—cross-examination of maker 1019
6722 Affidavit—taken before party 1020

Division 6.10.3A Notice to produce

6748 Notice to produce 1021

Division 6.10.4 Notices under Evidence Act

6750 Evidence of previous representation notice 1022
6751 Objection to hearsay evidence notice—civil proceedings 1022
6752 Tendency evidence notice 1022
6753 Coincidence evidence notice 1023

Division 6.10.5 Exhibits, documents and things

6760 Meaning of *subpoenaed document or thing*—div 6.10.5 1023
6761 Registrar to keep record of proceeding 1023
6762 Custody of exhibits after proceeding 1024
6763 Duty of parties to claim exhibits 1024
6765 Requirement to give or send exhibit 1026
6766 Disposal of exhibits 1026
6767 Power to allow removal of exhibits etc 1027

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 6.10.6 Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link

6800 Application for direction under Evidence (Miscellaneous Provisions) Act, s 20 1028

6801 Directions for Evidence (Miscellaneous Provisions) Act, s 20 1029

Division 6.10.8 Taking evidence otherwise than at trial

6810 Definitions—div 6.10.8 1030

6811 Effect of court directions for examination order 1030

6812 Application of div 6.10.8 to letter of request 1031

6813 Order for taking evidence otherwise than at trial 1031

6814 When examination order may be made 1032

6815 Application for examination order 1033

6816 Appointment of examiner 1033

6817 Documents for examiner 1033

6818 Time and place of examination etc 1034

6819 Conduct of examination 1034

6820 Examination of additional people 1035

6821 Objections by party or person being examined 1035

6822 Recording evidence of examination 1036

6823 Authentication and filing of deposition of examination etc 1037

6824 Special report on examination 1038

6825 Default of witness at examination 1038

6826 Costs of examination 1038

6827 Witness expenses for witness at examination 1039

6828 Admissibility of deposition of examination 1039

6829 Letter of request 1039

6830 Use of evidence taken in examination 1041

6831 Use of evidence taken in an examination—subsequent proceedings 1042

6832 Amendment and revocation of examination orders 1044

6833 Exclusion of evidence in criminal proceeding 1044

Division 6.10.9 Taking evidence for Australian and foreign courts and tribunals

6840 Definitions—div 6.10.9 1044

6841 Application—div 6.10.9 1045

6842 Application for div 6.10.9 order 1046

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

6843 Order relating to taking evidence for Australian or foreign court or tribunal 1046
6844 Div 6.10.9 order for criminal proceeding 1048
6845 Appointment of examiner for div 6.10.9 1048
6846 Attendance by div 6.10.9 order applicant at examination 1048
6847 Procedure for taking evidence under div 6.10.9 order 1049
6848 Keeping of exhibits at div 6.10.9 examination 1049
6849 Certificate of order and depositions—div 6.10.9 examination 1049
6850 Privilege of witnesses—div 6.10.9 examination 1050
6851 Privilege of witnesses—unsupported claim etc for div 6.10.9 examination 1051

Part 6.10A Trans-Tasman proceedings

Division 6.10A.1 Trans-Tasman proceedings—general

6860 Terms in Trans-Tasman Proceedings Act 1052

Division 6.10A.2 Trans-Tasman proceedings—orders under Trans-Tasman Proceedings Act

6861 Trans-Tasman proceedings—originating application 1052
6862 Trans-Tasman proceedings—applications in proceedings 1053
6863 Trans-Tasman proceedings—application for interim relief 1053

Division 6.10A.3 Trans-Tasman proceedings—service of subpoenas in New Zealand

6864 Application—div 6.10A.3 1054
6865 Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand 1054
6866 Trans-Tasman proceedings—application to set aside subpoena served in New Zealand 1056
6867 Trans-Tasman proceedings—noncompliance with subpoena served in New Zealand 1056

Division 6.10A.4 Trans-Tasman proceedings—remote appearances

6868 Trans-Tasman proceedings—application for order for use of audio link or audiovisual link from New Zealand 1058

Division 6.10A.5 Trans-Tasman proceedings—enforcement of NZ judgments

6869 Trans-Tasman proceedings—notice of registration of NZ judgment 1058

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

6870 Trans-Tasman proceedings—application for extension of time to give notice of registration of NZ judgment 1059
6871 Trans-Tasman proceedings—application to set aside registration of NZ judgment 1059
6872 Trans-Tasman proceedings—application for stay of enforcement of registered NZ judgment 1060
6873 Trans-Tasman proceedings—application for extension of time to apply for stay of enforcement of registered NZ judgment 1060

Part 6.11 Miscellaneous—ch 6

6900 Power to make orders 1062
6901 Orders may be made on conditions 1062
6902 Leave may be given on conditions 1062
6903 References to court acting on its own initiative 1062
6904 Mandatory order to registrar etc 1063
6905 Notices must be written 1063
6906 Mistakes in orders or court certificates 1063
6907 Power to make practice notes 1063

Chapter 7 Transitional

Part 7.1 Transitional—Supreme Court

7000 Transitional—existing proceedings in Supreme Court on 1 July 2006 1065
7002 Transitional—construction of outdated references to Supreme Court rules etc 1065

Part 7.2 Transitional—Magistrates Court

7011 Transitional—existing proceedings in Magistrates Court on 1 January 2007 1067

Schedule 1 Expert witness code of conduct 1068

1.1 Application of code 1068
1.2 General duty to court 1068
1.3 Content of report 1068
1.4 Supplementary report following change of opinion 1070

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

1.5 Duty to comply with court's directions 1070
1.6 Experts' conference etc 1070

Schedule 2 Interest rates 1072

Part 2.1 Interest up to judgment 1072
2.1 Interest up to judgment after 30 June 2010—Supreme Court 1073
2.2 Interest up to judgment after 30 June 2010—Magistrates Court 1074

Part 2.2 Interest after judgment 1075
2.3 Interest on judgment after 30 June 2010—Supreme Court 1075
2.4 Interest on judgment after 30 June 2010—Magistrates Court 1076

Schedule 3 Costs amount—debts, liquidated demands, company windings-up, enforcement orders and certificates of registration 1078

Part 3.1 Claim for debt or liquidated demand 1078

Part 3.2 Default judgment 1078

Part 3.3 Company winding-up 1079

Part 3.4 Enforcement orders 1079

Part 3.5 Certificate of registration 1080

Schedule 4 Scale of costs 1081

Part 4.1 Scale of costs—general 1081
4.1 Costs—general care and conduct 1081
4.2 Costs—registrar's discretion 1082
4.3 Costs—letters sent by email 1082
4.4 Costs—allowance on affidavits to include attendances 1082
4.5 Costs—affidavit made by 2 or more people etc 1083
4.6 Costs—documents to be served together 1083
4.7 Costs—agency correspondence 1083
4.8 Costs—attendance to instruct counsel 1083
4.9 Costs—parties with same solicitor 1084

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page
4.10 Costs—counsel drawing and settling documents 1085
4.11 Costs—premature brief 1085
4.12 Costs—transitional 1085

Part 4.2 Scale of costs—items 1086

Schedule 5 Jurisdiction of registrar 1098

Part 5.1 Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Supreme Court 1098

Part 5.2 Jurisdiction related to Corporations Act exercisable by registrar of Supreme Court 1109

Part 5.3 Jurisdiction related to ASIC Act exercisable by registrar of Supreme Court 1125

Part 5.4 Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Magistrates Court 1126

Schedule 6 Corporations Rules 1131

Part 6.1 Corporations Rules—preliminary 1131
1.1 Name of rules 1131
1.2 . 1131
1.3 Application of sch 6 and provisions of these rules 1131
1.4 Terms used in Corporations Act 1132
1.5 Definitions—sch 6 1133
1.6 References to rules 1134
1.7 Substantial compliance with forms 1134
1.8 Court’s power to give directions 1134
1.9 Calculation of time 1134
1.10 Extending and shortening of time 1135

Part 6.2 Proceedings generally 1136
2.1 Title of documents in a proceeding 1136
2.2 Originating process and interlocutory process 1136
2.3 Setting of hearing 1137

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
2.4	Supporting affidavits	1137
2.4A	Application for order setting aside statutory demand (Corporations Act, s 459G)	1138
2.5	Affidavits made by creditors	1138
2.6	Form of affidavits	1139
2.7	Service of originating process or interlocutory process and supporting affidavit	1139
2.8	Notice of certain applications to be given to ASIC	1140
2.9	Notice of appearance (Corporations Act, s 465C)	1141
2.10	Intervention in proceeding by ASIC (Corporations Act, s 1330)	1142
2.12	Proof of publication	1142
2.13	Leave to creditor, contributory or officer to be heard	1143
2.14	Inquiry in relation to corporation's debts etc	1144
2.15	Meetings ordered by the court	1144
Part 6.3	**Compromises and arrangements in relation to Part 5.1 bodies**	1145
3.1	Application—pt 1.3	1145
3.2	Nomination of chairperson for meeting	1145
3.3	Order for meetings to identify proposed scheme	1145
3.4	Notice of hearing (Corporations Act, s 411 (4) and s 413 (1))	1146
3.5	Copy of order approving compromise or arrangement to be lodged with ASIC	1147
Part 6.4	**Receivers and other controllers of corporation property (Corporations Act, pt 5.2)**	1148
4.1	Inquiry into conduct of controller (Corporations Act, s 423)	1148
Part 6.5	**Winding-up proceedings (including oppression proceedings where winding-up is sought)**	1149
5.1	Application—pt 6.5	1149
5.2	Affidavit accompanying statutory demand (Corporations Act, s 459E (3))	1149
5.3	Application for leave to apply for winding-up in insolvency (Corporations Act, s 459P (2))	1149
5.4	Affidavit in support of application for winding-up (Corporations Act, s 459P, s 462, s 464)	1150
5.5	Consent of liquidator (Corporations Act, s 532 (9))	1150
5.6	Notice of application for winding-up	1151

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
5.7	Applicant to make copies of documents available	1152
5.8	Discontinuance of application for winding-up	1152
5.9	Appearance before registrar	1152
5.10	Order substituting plaintiff in application for winding-up (Corporations Act, s 465B)	1152
5.11	Notice of winding-up order and appointment of liquidator	1153
Part 6.6	**Provisional liquidators (Corporations Act, pt 5.4B)**	1154
6.1	Appointment of provisional liquidator (Corporations Act, s 472)	1154
6.2	Notice of appointment of provisional liquidator	1154
Part 6.7	**Liquidators**	1156
7.1	Resignation of liquidator (Corporations Act, s 473 (1))	1156
7.2	Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)	1156
7.3	Report to liquidator as to company's affairs (Corporations Act, s 475)	1156
7.4	Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)	1157
7.5	Release of liquidator and deregistration of company (Corporations Act, s 480 (c) and (d))	1157
7.6	Objection to release of liquidator	1160
7.7	Report on accounts of liquidator (Corporations Act, s 481)	1160
7.8	Application for payment of call (Corporations Act, s 483 (3) (b))	1161
7.9	Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488 (2))	1161
7.10	Powers delegated to liquidator by the court (Corporations Act, s 488)	1162
7.11	Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))	1162
Part 6.8	**Special managers (Corporations Act, pt 5.4B)**	1164
8.1	Application for appointment of special manager (Corporations Act, s 484)	1164
8.2	Security given by special manager (Corporations Act, s 484)	1164
8.3	Special manager's receipts and payments (Corporations Act, s 484)	1165
Part 6.9	**Remuneration of office-holders**	1166
9.1	Remuneration of receiver (Corporations Act, s 425 (1))	1166
9.2	Determination by court of remuneration of administrator (Corporations Act, s 449E (1) (c) and (1A) (c))	1168
9.2A	Review of remuneration of administrator (Corporations Act, s 449E (2))	1170

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
9.3	Remuneration of provisional liquidator (Corporations Act, s 473 (2))	1172
9.4	Determination by court of liquidator's remuneration (Corporations Act, s 473 (3) (b) (ii))	1175
9.4A	Review of remuneration of liquidator (Corporations Act, s 473 (5) and (6) and s 504 (1))	1177
9.5	Remuneration of special manager (Corporations Act, s 484 (2))	1179
Part 6.10	**Winding-up generally**	1182
10.1	Determination of value of debts or claims (Corporations Act, s 554A (2))	1182
10.2	Disclaimer of contract (Corporations Act, s 568 (1A))	1182
10.3	Winding-up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act, s 601ND)	1182
Part 6.11	**Examinations and orders (Corporations Act, pt 5.9, div 1 and div 2)**	1183
11.1	Meaning of *examination summons* in pt 6.11	1183
11.2	Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)	1183
11.3	Application for examination summons (Corporations Act, s 596A, s 596B)	1184
11.4	Service of examination summons	1185
11.5	Discharge of examination summons	1185
11.6	Filing of record of examination (Corporations Act, s 597 (13))	1185
11.7	Authentication of transcript of examination (Corporations Act, s 597 (14))	1186
11.8	Inspection of record or transcript of examination or investigation under Corporations Act, s 411, s 423 or s 536	1186
11.9	Entitlement to record or transcript of examination held in public	1186
11.10	Default in relation to examination	1187
11.11	Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act, s 598)	1188
Part 6.11A	**Warrants (Corporations Act, s 486B and pt 5.4B, div 3, subdiv B)**	1189
11A.1	Arrest of person (Corporations Act, s 486B)	1189
Part 6.12	**Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C, 6D and 7) and securities (Corporations Act, ch 7)**	1190

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

		Page
12.1	Service on ASIC in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7	1190
12.1A	Reference to court of question of law arising in proceeding before Takeovers Panel (Corporations Act, s 659A)	1190
12.1B	Notification to court if proceeding started before end of takeover bid period (Corporations Act, s 659B)	1190
12.2	Application for summons for appearance of person (Corporations Act, s 1071D (4))	1191
12.3	Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)	1191
Part 6.13	**.**	1192
Part 6.14	**Powers of courts (Corporations Act, pt 9.5)**	1193
14.1	Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act, s 554A, s 1321)	1193
Part 6.15	**Proceedings under ASIC Act**	1195
15.1	Reference to court of question of law arising at hearing of ASIC (ASIC Act, s 61)	1195
15.2	.	1195
15.3	Application for inquiry (ASIC Act, s 70, s 201, s 219)	1195
Part 6.15A	**Proceedings under the Cross-Border Insolvency Act**	1196
Division 6.15A.1	**Introduction**	
15A.1	Application—pt 6.15A and other rules	1196
15A.2	Terms used in Cross-Border Insolvency Act	1196
Division 6.15A.2	**Recognition of a foreign proceeding**	
15A.3	Application for recognition	1198
15A.4	Application for provisional relief under Model Law, art 19	1199
15A.5	Liquidator's consent to act	1199
15A.6	Notice of filing application for recognition	1200
15A.7	Notice of order for recognition, withdrawal etc	1200
15A.8	Relief after recognition	1201
15A.9	Application to modify or terminate order for recognition or other relief	1202
Division 6.15A.3	**Cooperation with foreign courts and representatives**	
15A.10	Cooperation involving court to be under coordination agreement	1203
15A.11	Application for approval of coordination agreement	1205
15A.12	Appointment of independent intermediary	1206

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Page

Division 6.15A.4 Concurrent proceedings

15A.13 Starting proceeding after recognition of a foreign main proceeding 1207

Division 6.15A.5 General

15A.14 Proof of orders or documents of foreign courts 1207

15A.15 Service in accordance with service list 1208

Part 6.16 . 1209

Dictionary 1210

Endnotes

1 About the endnotes 1236

2 Abbreviation key 1236

3 Legislation history 1237

4 Amendment history 1244

5 Earlier republications 1369

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Australian Capital Territory

Court Procedures Rules 2006

made under the

Court Procedures Act 2004

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Chapter 1 Preliminary

1 Name of rules

These rules are the *Court Procedures Rules 2006*.

3 Overview of rules

The note to this rule provides a general overview of these rules.

Note on general overview of rules

Chapter 1 Preliminary

Ch 1 deals with the application of these rules and dispensing with compliance. It also contains formal provisions.

Chapter 2 Civil proceedings generally

Ch 2 contains rules about civil proceedings generally, including the steps in a civil proceeding eg how to start a civil proceeding.

Chapter 3 Particular civil proceedings

Ch 3 contains rules about particular civil proceedings, eg adoption proceedings and administration and probate proceedings in the Supreme Court.

Chapter 4 Criminal proceedings

Ch 4 contains rules about criminal proceedings, including the steps in a criminal proceeding eg arraignments.

Chapter 5 Appellate proceedings

Ch 5 contains rules about appellate proceedings, including the steps in an appellate proceeding eg when appeal papers must be filed.

Chapter 6 General rules for all proceedings

Ch 6 contains general rules that apply to all proceedings, eg rules about service and documents.

Chapter 7 Transitional

Ch 7 deals with the application of these rules to existing proceedings and contains other transitional provisions.

Schedule 1 Expert witness code of conduct

Sch 1 sets out the code of conduct applying to expert witnesses.

Schedule 2 Interest rates

Sch 2 sets out the interest rates applying to judgments.

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Schedule 3 Costs amount—debts and liquidated claims

Sch 3 sets up the prescribed costs amount for claims for debts and liquidated demands and for default judgments.

Schedule 4 Scale of costs

Sch 4 sets out the scale of costs.

Schedule 5 Jurisdiction of registrar

Sch 5 contains provisions about the jurisdiction of the registrar (see also pt 6.5).

Schedule 6 Corporations Rules

Sch 6 contains rules for proceedings under the corporations law.

Dictionary

The dictionary defines certain terms used in these rules.

4 Application of rules

(1) Unless a territory law otherwise provides, these rules apply to all proceedings in the Supreme Court and Magistrates Court.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) Also, a provision of these rules mentioned in an item in the following table, column 2 does not apply to a proceeding in the Supreme Court until the provision mentioned in the item, column 3 is repealed or otherwise ceases to apply for the purpose of proceedings in that court.

Table 4.1 Provisions with delayed application to Supreme Court proceedings

column 1 item	column 2 provision of these rules	column 3 provision of other law
1	division 2.11.7 (Mediation and neutral evaluation)	*Civil Law (Wrongs) Act 2002*, part 15.1 (Mediation and neutral evaluation)

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(3) Subrule (2) (including table 4.1) and this subrule expire on the day the last of the provisions mentioned in the table, column 3 is repealed or otherwise ceases to apply for the purpose of proceedings in the Supreme Court.

5 References to *court*, *judicial officer* etc

(1) In a provision of these rules, a reference to the ***court*** is a reference to the Supreme Court, the Magistrates Court or both, whichever is appropriate in the context of the provision.

(2) Also, in these rules, a reference to the ***court***—

(a) for the exercise of jurisdiction given to the associate judge under a territory law—includes a reference to the associate judge; and

(b) for the exercise of jurisdiction given to the registrar under a territory law—includes a reference to the registrar.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 Pt 6.4 deals with the jurisdiction of the associate judge and pt 6.5 deals with the jurisdiction of the registrar (see also sch 5).

(3) In these rules, a reference to a ***judicial officer*** is a reference to—

(a) in relation to the Supreme Court—any of the following:

(i) a judge;

(ii) as far as these rules provide for the exercise of the court's jurisdiction by the associate judge, the associate judge;

(iii) as far as these rules provide for the exercise of the court's jurisdiction by the registrar, the registrar; and

(b) in relation to the Magistrates Court—any of the following:

(i) a magistrate;

(ii) as far as these rules provide for the exercise of the court's jurisdiction by the registrar, the registrar.

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(4) In these rules, a reference to the ***registrar*** in relation to a court is a reference to the registrar or a deputy registrar of the court.

(5) In a provision of these rules, a reference to the ***deputy registrar*** is a reference to a deputy registrar of the Supreme Court or a deputy registrar of the Magistrates Court, whichever is appropriate in the context of the provision.

(6) In a provision of these rules, a reference to the ***registry*** is a reference to the registry of the Supreme Court or Magistrates Court, whichever is appropriate in the context of the provision.

6 Dispensing with rules

(1) The court may, by order, dispense with the application of a provision of these rules to a particular proceeding, before or after the provision applies and on any conditions it considers appropriate.

Examples

1 Rule 111 (5) (Conditional notice of intention to respond) provides that, not later than 14 days after the day a conditional notice of intention to respond becomes an unconditional notice of intention to respond, the defendant must file a defence. The court may order that the defendant must file the defence not later than 21 days instead.

2 Rule 6009 (Application in proceeding—filing and service of supporting material) requires the supporting material for an application in a proceeding to be filed and served with the application. The court may order that the applicant may file the supporting material at time other than when the application is filed.

3 Rule 6350 (3) (Time—certain days excluded in working out) provides that any day in the period beginning on 25 December and ending on 1 January is excluded in working out when a thing must or may be, or is, done. In an urgent matter, the court may order that those days are not excluded when working out when a document is served.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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(2) If an application for an order under this rule in relation to a proceeding is made during the proceeding or after judgment is given in the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(3) Without limiting rule 6016 (Application in proceeding—oral application), an application for a decision or order under this rule may be made orally, unless the court otherwise orders on its own initiative.

(4) For the Supreme Court, if an application for an order under this rule in relation to a proceeding is made before the proceeding starts, the application must be made by originating application.

(5) An express reference in a provision of these rules to the court dispensing with the application (however expressed) of a provision of these rules (an ***affected provision***) does not, by implication, limit the operation of this rule to the affected provision or to any other provision of these rules.

7 Dictionary

The dictionary at the end of these rules is part of these rules.

Note 1 The dictionary at the end of these rules defines certain terms used in these rules, and includes references (***signpost definitions***) to other terms defined elsewhere in these rules.

For example, the signpost definition '***earnings redirection order***—see rule 2350.' means that the term 'earnings redirection order' is defined in that rule.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire rules unless the definition, or another provision of these rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

8 Notes

A note included in these rules is explanatory and is not part of these rules.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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Chapter 2 Civil proceedings generally

Part 2.1 Introductory provisions—ch 2

20 Meaning of *plaintiff* and *defendant*

(1) For a proceeding (other than an application in the proceeding or a proceeding on a counterclaim or third-party notice)—

(a) a reference in these rules to the ***plaintiff*** is a reference to the party claiming relief; and

(b) a reference in these rules to the ***defendant*** is a reference to the party against whom relief is sought or who otherwise responds to the originating process.

Note 1 ***Third-party notice*** includes a fourth-party notice, a fifth-party notice etc (see r 322 (2) (c)).

Note 2 Rule 6007 (Application in proceeding—contents) requires an application in a proceeding to identify the person making the application and each person against whom relief is sought.

(2) For a proceeding on a counterclaim or third-party notice (the ***process***)—

(a) a reference in these rules to the ***plaintiff*** includes a reference to the party who files and serves the process; and

(b) a reference in these rules to the ***defendant*** includes a reference to the person on whom the process is served.

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22 Application—ch 2

(1) This chapter applies to every proceeding in the Supreme Court or Magistrates Court to which these rules apply.

Note 1 Rule 4 (Application of rules) deals with the proceedings to which these rules apply.

Note 2 This chapter has been disapplied (with exceptions) in relation to family and personal violence proceedings (see r 3802) and workers compensation proceedings (see r 3903).

Note 3 The Magistrates Court includes the Childrens Court (see *Magistrates Court Act 1930*, s 287).

(2) However, this chapter applies to a criminal proceeding, forensic proceeding or appellate proceeding only as far as a territory law provides that it applies.

Note 1 ***Criminal proceeding*** and ***appellate proceeding*** are defined in the dictionary.

Note 2 ***Forensic proceeding*** is defined in rule 4800.

Note 3 Ch 4 deals with criminal and forensic proceedings and ch 5 deals with appellate proceedings.

Note 4 A ***territory law*** includes these rules or a provision of these rules (see Legislation Act, s 98 and s 97 (1), def ***ACT law***).

(3) Also, this chapter does not apply to another proceeding as far as—

(a) this chapter provides that it does not apply to the proceeding; or

(b) chapter 3 (Particular civil proceedings) provides that this chapter does not apply to the proceeding or otherwise makes provision for the proceeding inconsistent with this chapter; or

(c) another territory law (including another provision of these rules) provides that this chapter does not apply to the proceeding.

Note Ch 6 has provisions applying to all proceedings (see r 6000 (Application—ch 6).

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Part 2.2 Starting civil proceedings

Division 2.2.1 How civil proceedings are started

30 Who may start and carry on a proceeding

(1) An individual may start and carry on a proceeding in the court—

(a) in person; or

(b) by a solicitor acting for the individual.

Note Rule 275 (1) (Person with legal disability—litigation guardian to start proceeding etc) provides that a person with a legal disability may start or defend, and carry on, a proceeding only by the person's litigation guardian.

(2) However, a relator may only start and carry on a proceeding by a solicitor acting for the relator.

Note A relator is a person who starts and carries on a proceeding in the Attorney-General's name. A person may bring a proceeding as relator with the Attorney-General's permission (or fiat) where the proceeding involves the public interest and the person would otherwise not have standing to bring the proceeding.

(3) A solicitor may act for a relator in a proceeding only if—

(a) the relator has given the solicitor written authority to act in the proceeding; and

(b) the authority is filed in the court.

(4) A corporation may start and carry on a proceeding in the Supreme Court—

(a) by a solicitor acting for the corporation; or

(b) with the court's leave, by an officer or employee of the corporation authorised by the corporation to represent it.

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(5) If an application for leave under subrule (4) is made during the proceeding or after judgment is given in the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(6) For the Supreme Court, if an application for leave under subrule (4) is made before the proceeding starts, the application must be made by originating application.

(7) A corporation may start and carry on a proceeding in the Magistrates Court—

(a) by a solicitor acting for the corporation; or

(b) by an officer or employee of the corporation authorised by the corporation to represent it.

(8) An officer or employee mentioned in subrule (7) must file with the first document that is filed in the court for the corporation in the proceeding—

(a) an affidavit stating—

(i) the position the person holds in the corporation; and

(ii) that the person has been authorised by the corporation to represent the corporation in the proceeding; and

(iii) that the authority has not been revoked; and

(iv) that the person is aware that the person may be liable to pay some or all of the costs of the proceeding; and

(b) a copy of an instrument authorising, or evidencing the authorisation of, the person to represent the corporation in the proceeding.

Note An ***instrument*** is defined in the Legislation Act, s 14 as any writing or other document. ***Writing*** and ***document*** are defined in the Legislation Act, dict, pt 1.

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31 Kinds of originating processes

(1) A proceeding may be started by an originating claim or originating application in accordance with these rules.

(2) An application in a proceeding is not an originating process.

Note An ***originating process*** means an originating claim or originating application (see dict). An ***application*** in a proceeding is defined in r 6006 to include an application to the court about the proceeding.

32 When civil proceeding starts

(1) A proceeding started by an originating process starts on the day the originating process for the proceeding is filed.

Note 1 Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

Note 2 Rule 301 deals with when a third-party proceeding starts.

(2) However, if a proceeding is started by oral originating application under rule 37 (When oral originating application may be made in Supreme Court), the proceeding starts on the day the oral originating application is made.

(3) For this rule, it does not matter—

(a) that the originating process later ceases to be valid for service or is renewed under rule 74 (Originating process—duration and renewal); or

(b) that the proceeding started by the originating process is later dismissed under rule 75 (When proceeding taken to be dismissed); or

(c) that the proceeding started by the originating process is reinstated under rule 76 (Reinstating dismissed proceeding).

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33 When originating claim must be used

(1) A proceeding must be started by originating claim if a territory law requires the proceeding to be started by originating claim.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) A proceeding must also be started by originating claim unless a territory law requires or allows the proceeding to be started by originating application.

34 When originating application must be used

(1) A proceeding must be started by originating application if a territory law requires the proceeding to be started by originating application.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 For cases in which an originating application is required under these rules, see the following provisions:

- r 6 (4) (Dispensing with rules)
- r 30 (6) (Who may start and carry on a proceeding)
- r 211 (4) (Including parties—common issues of law or fact)
- r 280 (10) (Litigation guardian—appointment and removal by court)
- r 282 (2) (Person with legal disability—approval of settlement etc)
- r 650 (2) (Discovery to identify potential defendant)
- r 651 (2) (Discovery to identify right to claim relief)
- r 706 (4) (Urgent orders before start of proceeding)
- r 728 (1) (Div 2.9.4 order—procedure)
- r 2600 (3) (Interpleader—application by stakeholder)
- r 2746 (3) (Estate and trust accounts—order requiring examination and passing of accounts)
- r 3005 (1) (Grant of representation—application)
- r 3020 (1) (Reseal of foreign grant—application)
- r 3069 (3) (Caveat—setting aside)
- r 3080 (3) (Revocation of grant—urgent order before start of proceeding)
- r 3092 (1) (Division 3.1.9 proceeding—starting)

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- r 3114 (3) (Failure of executor to prove will—Administration and Probate Act)
- r 3115 (3) (Failure by executor, administrator or trustee to comply with beneficiary's request etc)
- r 3303 (2) (Cross-vesting—application for transfer or removal of proceedings)
- r 3454 (1) (Foreign confiscation orders—proceedings for registration)
- r 3463 (1) (Interstate confiscation orders—proceedings for registration)
- r 3473 (1) (Foreign judgment—application for registration)
- r 3252 (Commercial arbitration—application)
- r 3504 (1) (Habeas corpus—application and service)
- r 3556 (1) (Judicial review—application)
- r 3608 (1) (Admission—application for admission).

Note 3 See also r 3353 (Election application etc originating application).

(2) A proceeding must also be started by originating application if—

(a) a territory law requires or allows a person to apply to the court for an order or another kind of relief; and

(b) the law does not state the kind of originating process to be used.

35 When originating application may be used

(1) A proceeding may be started by originating application if—

(a) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

(b) there is no opposing party to the proceeding or it is not intended to serve anyone with the originating process; or

(c) there is not enough time to prepare an originating claim because of the urgent nature of the relief sought; or

(d) a territory law allows the proceeding to be started by originating application.

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Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 Rule 2501 (Contempt—applications generally) allows a contempt application to be made by originating application.

(2) Without limiting subrule (1), a proceeding may be started by originating application if—

(a) the only or main issue in the proceeding is the interpretation of legislation and a substantial dispute of fact is unlikely; or

(b) the only or main issue in the proceeding is the interpretation of a deed, will, contract or other document and a substantial dispute of fact is unlikely; or

(c) the relief sought is a declaration of right and there is no opposing party to the proceeding; or

(d) for a question or matter in relation to the estate of a deceased person or a trust, without administration of the estate or trust—

(i) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

(ii) there is no opposing party to the proceeding or it is not intended to serve anyone with the originating process.

Examples for r (2) (d)

1 a question affecting the rights or interests of someone claiming to be a creditor, domestic partner or next of kin of the deceased person or beneficiary of the trust

2 finding out any class of creditors, next of kin or others

3 producing any particular accounts by the executors, administrators or trustees, and verifying the accounts (if necessary)

4 paying into court any amount held by the executors, administrators or trustees

5 directing the executors, administrators or trustees to do or not do something as executor, administrator or trustee

6 approving any sale, purchase, compromise or other transaction

7 deciding any question arising in the administration of the estate or trust

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Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Also, a proceeding may be started by originating application if—

(a) a territory law requires or allows a person to apply to the court for an order or another kind of relief; and

(b) a particular kind of originating process (other than an originating claim or originating application) is required or allowed under a territory law.

36 When originating application taken to be used

A proceeding is taken to be started by originating application if—

(a) a territory law requires or allows a person to apply to the court for an order or another kind of relief; and

(b) a particular kind of originating process (other than an originating claim or originating application) (the ***particular originating process***) is required or allowed under a territory law; and

(c) the proceeding is started by the particular originating process.

37 When oral originating application may be made in Supreme Court

(1) This rule applies only in relation to the Supreme Court.

(2) The court may give leave for a proceeding to be started by oral originating application if satisfied that it is necessary to start the proceeding in this way.

Example of necessity

urgent relief is sought

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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(3) An application for leave to start a proceeding or for an order under this rule must be made in accordance with part 6.2 (Applications in proceedings).

(4) Without limiting rule 6016 (Application in proceeding—oral application), an application for a decision or order under this rule may be made orally, unless the court otherwise orders on its own initiative.

(5) The plaintiff must file a written originating application in the same terms as the oral originating application.

(6) The written originating application must be filed—

(a) as soon as practicable after the oral originating application is made; or

(b) if the court makes an order about when it must be filed—in accordance with the order.

38 Proceeding incorrectly started by originating claim

(1) This rule applies if the court considers that a proceeding started by originating claim should have been started by originating application or may more conveniently continue as if started by originating application.

(2) The court may—

(a) order that the proceeding continue as if started by originating application; and

(b) give the directions it considers appropriate for the conduct of the proceeding; and

Note See r 1401 (Directions generally).

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(c) make any other order it considers appropriate.

Example

the court may order that the content of any pleadings filed in the proceeding be put before the court as affidavits

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) If the court makes an order under subrule (2) (a)—

(a) the originating claim is taken to be an originating application; and

(b) the proceeding is taken to be a proceeding started by originating application.

39 Proceeding incorrectly started by originating application

(1) This rule applies if the court considers that a proceeding started by originating application should have been started by originating claim or may more conveniently continue as if started by originating claim.

(2) The court may do all or any of the following:

(a) order that the proceeding continue as if started by originating claim;

(b) give the directions it considers appropriate for the conduct of the proceeding;

(c) order that any affidavits filed in the proceeding be treated as pleadings, alone or supplemented by particulars;

(d) order that the plaintiff file and serve a statement of claim;

(e) make any other order it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

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(3) If the court makes an order under subrule (2) (a)—

(a) the originating application is taken to be an originating claim; and

(b) the proceeding is taken to be a proceeding started by originating claim.

40 Setting aside originating process etc

(1) The court may—

(a) declare that a proceeding for which an originating process has been issued has not, for want of jurisdiction, been properly started; or

(b) declare that an originating process has not been properly served; or

(c) set aside an order for service of an originating process; or

(d) set aside an order extending the period for service of an originating process; or

(e) set aside an originating process; or

(f) set aside service of an originating process; or

(g) stay a proceeding; or

(h) amend or set aside leave under rule 6503 (Service of originating process with leave); or

(i) make an order protecting or releasing—

(i) property seized, or threatened with seizure, in a proceeding; or

(ii) property subject to an order restraining its disposal or in relation to which an order restraining its disposal is sought; or

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(j) make an order declining to exercise jurisdiction in a proceeding; or

(k) make any other order it considers appropriate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6015 (Application in proceeding—application under r 40) provides that an application for an order under this rule must be filed within the time mentioned in r 102 (Notice of intention to respond or defence—filing and service) for filing a notice of intention to respond or, if no notice of intention to respond is filed, a defence.

Note 3 The registrar may reject an originating process that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc).

(2) However, the court must not—

(a) set aside a proceeding only because the proceeding was started by the incorrect originating process; or

(b) set aside an originating process only because the incorrect originating process was used.

Division 2.2.2 Originating claims

50 Originating claim—content etc

(1) An originating claim must state briefly and specifically the nature of the claim made and relief sought.

Note See approved form 2.1 (Originating claim) AF2006-246.

(2) A statement of claim must be attached to the originating claim.

Note 1 See

- approved form 2.2 (Statement of claim—debt or liquidated demand) AF2007-60
- approved form 2.3 (Statement of claim—motor vehicle death or personal injury) AF2014-160

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- approved form 2.4 (Statement of claim—employment death or personal injury) AF2014-26
- approved form 2.6 (Statement of claim—general) AF2006-447.

Note 2 Rule 52 sets out requirements for the statement of claim for a motor vehicle death or personal injury claim and r 53 sets out requirements for a statement of claim for an employment death or personal injury claim.

Note 3 A statement of claim is a pleading (see dict, def ***pleading***) and therefore must comply with pt 2.6 (Pleadings).

Note 4 ***Attached*** to a document is defined in the dictionary.

(3) An originating claim filed in the Magistrates Court, or the attached statement of claim, must show that the court has jurisdiction to decide the claim.

Note The *Magistrates Court Act 1930*, pt 4.2 (Civil jurisdiction) deals with the civil jurisdiction of the Magistrates Court under that Act.

(4) An originating claim must state—

(a) whether the plaintiff is represented by a solicitor; and

(b) if the plaintiff is represented by a solicitor—the name of the solicitor; and

(c) the plaintiff's address for service; and

(d) if the plaintiff is suing in a representative capacity—the representative capacity in which the plaintiff is suing; and

(e) if a defendant is being sued in a representative capacity—the representative capacity in which the defendant is being sued.

Note ***Address for service*** is defined in the dictionary.

(5) An originating claim must state specifically any claim for—

(a) exemplary damages or aggravated damages; and

(b) interest up to the day of judgment.

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(6) An originating claim need not specifically claim costs unless the claim is for a debt or liquidated demand.

Note ***Liquidated demand*** is defined in the dictionary.

(7) If the relief sought requires the court's decision or direction on any question, the originating claim must state the question.

51 Originating claim—additional matters for claims for debt and liquidated demands

(1) This rule applies to an originating claim that includes a claim for a debt or liquidated demand.

Note ***Liquidated demand*** is defined in the dictionary.

(2) A claim for interest up to the day of judgment—

(a) must state the period or periods for which interest is claimed; and

(b) may state the rate or rates at which interest is claimed.

(3) If a rate is not claimed under subrule (2) (b), the rate is taken to be the rate of interest applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

(4) The costs amount applying under schedule 3, part 3.1 (Claim for debt or liquidated demand) must be specifically claimed for costs.

52 Originating claim—statement of claim for motor vehicle death and personal injury claims

(1) This rule applies in relation to an originating claim that includes a claim for damages for death or personal injury caused by, or arising out of, the negligent use of a motor vehicle (the ***accident***).

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(2) The statement of claim for the originating claim must include, and is sufficient if it includes, the following:

(a) the time, date, place and circumstances of the accident (including, if possible, the registration details of all motor vehicles involved);

(b) precise particulars of the negligence claimed;

(c) for a claim for personal injury—details of the nature and extent of the injuries and disabilities resulting from the accident, as far as is known, that is enough (if possible) to enable the defendant to nominate the kind of expert required to examine the plaintiff;

(d) the name of each health professional who has treated the plaintiff for the injuries and disabilities, and for any condition exacerbated by the injury or disability;

(e) the nature of any claim for past or future economic loss, as far as is known, including (if relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the accident.

Note 1 See approved form 2.3 (Statement of claim—motor vehicle death or personal injury) AF2014-160.

Note 2 A statement of claim is a pleading (see dict, def ***pleading***) and therefore must comply with pt 2.6 (Pleadings).

53 Originating claim—statement of claim for employment death and personal injury claims

(1) This rule applies in relation to an originating claim that includes a claim for damages for death or personal injury caused by, or arising out of, negligence or breach of statutory duty by an employer (the ***incident***).

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(2) The statement of claim for the originating claim must include, and is sufficient if it includes, the following:

(a) if the cause of action is based on negligence—the time, date, place and circumstances of the negligence claimed, including the acts or omissions making up the negligence;

(b) if the cause of action is based on negligence and the negligence claimed was that of someone (other than the defendant) for whose negligence the defendant is vicariously liable—particulars of the person, and particulars of the claim for vicarious liability;

(c) if the cause of action is based on breach of statutory duty—the name and provision of the statute and a precise statement of the acts or omissions making up the breach claimed;

(d) for a claim for personal injury—details of the nature and extent of the injuries and disabilities resulting from the incident, as far as is known, that is enough (if possible) to enable the defendant to nominate the kind of expert required to examine the plaintiff;

(e) the name of each health professional who has treated the plaintiff for the injuries and disabilities, and for any condition exacerbated by the injury or disability;

(f) the nature of any claim for past or future economic loss, as far as is known, including (if relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the incident;

(g) the jurisdiction that the plaintiff claims is the Territory or State of connection for the *Workers Compensation Act 1951*, section 182D (Applicable substantive law for damages claims).

Note 1 See approved form 2.4 (Statement of claim—employment death or personal injury) AF2014-26.

Note 2 A statement of claim is a pleading (see dict, def ***pleading***) and therefore must comply with pt 2.6 (Pleadings).

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54 Originating claim—filing and service

(1) An originating claim and attached statement of claim must be filed in the court and a sealed copy then served on each defendant.

(2) The originating claim and attached statement of claim must be served personally on each defendant, unless otherwise provided by these rules.

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6412 (Service of originating process by post—Magistrates Court) and r 6431 (Service on corporations—generally). Also, service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

55 Originating claim—abandonment of excess in Magistrates Court

(1) This rule applies if a person has a cause of action against another person for more than $250 000.

(2) The person may start a proceeding for the cause of action in the Magistrates Court if the person—

(a) abandons the excess and limits the claim to $250 000; and

(b) states in the claim that the excess is abandoned.

(3) Judgment in a proceeding under this rule—

(a) is in full discharge of all demands in relation to the cause of action; and

(b) must record the abandonment.

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Division 2.2.3 Originating applications

60 Originating application—content etc

(1) Subject to division 2.4.6 (Representation—trustees and personal representatives), an originating application must name as defendants everyone directly affected by the relief sought in the application.

Note See approved form 2.7 (Originating application) AF2006-252.

(2) Subrule (1) does not apply if—

(a) a territory law allows the hearing of the originating application without it being served on anyone; or

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(b) the relief sought in the application is a declaration of right.

(3) The originating application must state specifically the orders or other relief sought in the proceeding.

(4) The originating application must list the affidavits to be relied on by the plaintiff (the ***supporting affidavits***).

(5) The court may order the plaintiff to an originating application to file supporting affidavits for the application.

(6) An originating application filed in the Magistrates Court, or the supporting affidavits, must show that the court has jurisdiction to decide the application.

Note The *Magistrates Court Act 1930*, pt 4.2 (Civil jurisdiction) deals with the civil jurisdiction of the Magistrates Court under that Act.

(7) An originating application must state—

(a) whether the plaintiff is represented by a solicitor; and

(b) if the plaintiff is represented by a solicitor—the name of the solicitor; and

(c) the plaintiff's address for service; and

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(d) if the plaintiff is suing in a representative capacity—the representative capacity in which the plaintiff is suing; and

(e) if the defendant is being sued in a representative capacity—the representative capacity in which the defendant is being sued.

Note ***Address for service*** is defined in the dictionary.

(8) If an originating application is made under a statute, the application must state the name and provision of the statute under which the application is made.

(9) The originating application, and any copies of the application for service, must state a return date for the application unless a territory law requires that a return date not be set for the application.

Note 1 ***Return date*** for an application is defined in the dictionary.

Note 2 Some provisions of these rules require that a return date not be set for an application under the rule unless the court otherwise orders. See the following provisions:

- r 3005 (6) (Grant of representation—application)
- r 3020 (4) (Reseal of foreign grant—application)
- r 3454 (4) (Foreign confiscation orders—proceedings for registration)
- r 3463 (4) (Interstate confiscation orders—proceedings for registration)
- r 3473 (4) (Foreign judgment—application for registration).

61 Originating application—filing and service

(1) An originating application must be filed in the court and a sealed copy then served on each defendant and anyone else the court directs.

(2) For an originating application for a question in relation to the estate of a deceased person or a trust, without administration of the estate or trust—

(a) if the application is by a personal representative of the estate or a trustee of the trust—the application must be served on

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everyone directly affected by the relief sought in the application; or

Note See also div 2.4.6 (Representation—trustees and personal representatives).

(b) if the proceeding the subject of the application is started by someone other than a personal representative of the estate or a trustee of the trust—the application must be served on the personal representatives or trustees.

(3) The originating application must be served personally on each defendant or each person mentioned in subrule (2), unless otherwise provided by these rules.

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6412 (Service of originating process by post—Magistrates Court) and r 6431 (Service on corporations—generally). Also, service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

(4) For an originating application for which there are no defendants, the court may order that the application be served on anyone the court directs.

Example

an originating application in which the relief sought is a declaration of right

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) The court may give a direction under subrule (1) or (4) on application or its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction.

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62 When originating application must be served

(1) An originating application must be served at least 5 days before the return date for the application.

Note ***Return date*** for an application is defined in the dictionary.

(2) However, subrule (1) does not apply if—

(a) a territory law allows the originating application to be heard and decided without being served; or

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(b) the plaintiff proposes in the originating application that it be decided without a hearing; or

(c) another time is provided for under these rules; or

(d) the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If the court makes an order under subrule (2) (d), a sealed copy of the order must be served with the application.

63 What happens if originating application not served in time

(1) This rule applies if—

(a) an originating application is served on a defendant; but

(b) it is not served at least 5 days before the return date for the application.

Note ***Return date*** for an application is defined in the dictionary.

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(2) The court may only hear and decide the application on the return date if the court considers it just to hear and decide the application on that date and—

(a) the court is satisfied that the defendant will suffer no significant prejudice if it hears and decides the application on the return date; or

(b) the defendant agrees to the court hearing and deciding the application on the return date.

(3) The court may make an order on the return date if the plaintiff gives an undertaking acceptable to the court.

(4) On application by a person affected by the order, the court may set aside the order.

Note Pt 6.2 (Applications in proceedings) applies to an application to set aside the order.

64 Originating application—filing and service of supporting affidavits

(1) The supporting affidavits for an originating application must be filed in the court and a stamped copy then served with the application.

(2) However, the court may give leave for an affidavit not served as required by subrule (1) to be relied on at the hearing.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 2.2.4 Rules about originating process

70 Originating process to be sealed

The registrar must seal the original and filed copies of an originating process.

Note The registrar may reject an originating process that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc).

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71 Numbering etc of proceedings

(1) When an originating process is sealed, the registrar must give a distinguishing number or other unique identifier to the proceeding started by the process.

(2) The registrar must ensure that the original and each copy sealed under rule 70 is endorsed with—

(a) the distinguishing number or other unique identifier given to the proceeding; and

(b) the date when—

(i) the process was filed in the court; or

(ii) if the proceeding was started by an oral originating application—the application was made.

Note See r 37 (When oral originating application may be made in Supreme Court).

72 Originating process—solicitor's statement about filing

(1) This rule applies if—

(a) it appears from an originating process that the plaintiff is represented by a solicitor; and

(b) a defendant to the proceeding asks the solicitor in writing whether the process was filed by the solicitor.

(2) The solicitor must tell the defendant in writing whether the process was filed in the court by the solicitor.

(3) If the solicitor tells the defendant that the solicitor did not file the process, the defendant may apply to the court to stay the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application to stay the proceeding.

(4) On the defendant's application, the court may stay the proceeding.

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73 Defendant taken to be served by filing notice of intention to respond or defence

(1) This rule applies to a defendant in a proceeding if the defendant has not been served with the originating process for the proceeding, but files a notice of intention to respond (other than a conditional notice of intention to respond) or a defence.

(2) The defendant is taken to have been served with the originating process on the day the defendant files the notice of intention to respond or defence.

74 Originating process—duration and renewal

(1) An originating process is valid for service for 1 year starting on the day it is filed in the court.

(2) The plaintiff may apply to the court to renew the originating process if the process has not been served on the defendant.

Note Pt 6.2 (Applications in proceedings) applies to an application to renew the originating process.

(3) If the court is satisfied that reasonable efforts have been made to serve the defendant or that there is another good reason to renew the originating process, the court may renew the process for a further period, of not longer than 6 months at a time, starting on the day after the day the process would otherwise end.

(4) The originating process may be renewed whether or not it is valid for service.

(5) Before an originating process renewed under this rule is served, it must be stamped and show the period for which the process is renewed.

(6) Despite subrule (1), for any time limit (including a limitation period), an originating process that is renewed is taken to have started on the day the process was filed in the court.

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(7) Failing to serve an originating process within the time limited by these rules does not prevent the plaintiff from starting a fresh proceeding by filing another originating process.

75 When proceeding taken to be dismissed

(1) A proceeding is taken to be dismissed in relation to a defendant if—

(a) at the end of 1 year after the day the originating process is issued, an affidavit of service of the process on the defendant has not been filed in the court; or

(b) at the end of 1 year after the day the originating process is served on the defendant—

(i) a notice of intention to respond or defence has not been filed in the court by the defendant; and

(ii) judgment has not been entered in relation to the defendant; and

(iii) the proceeding has not otherwise been disposed of in relation to the defendant.

(2) Also, a proceeding is taken to be dismissed in relation to a party if the party does not take a step in the proceeding before the end of 1 year after the day the last step was taken in the proceeding.

(3) For subrule (2), the filing in the court of a notice of intention to proceed in relation to a proceeding is taken to be a step in the proceeding.

Note See approved form 2.84 (Notice of intention to proceed) AF2008-3.

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(4) A proceeding is taken to be dismissed under subrule (1) or (2) on the day after the day the relevant 1-year period mentioned in the subrule ends.

Example

There is 1 plaintiff and 1 defendant to a proceeding. The defendant takes a step in the proceeding on 1 July 2006. If the plaintiff fails to take the next step on or before 1 July 2007, the proceeding is taken to be dismissed on 2 July 2007.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

76 Reinstating dismissed proceeding

(1) A person whose proceeding has been dismissed under rule 75 may apply to the court to reinstate the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application to reinstate the proceeding.

(2) The court may reinstate the proceeding if it is in the interests of justice to reinstate the proceeding.

(3) A proceeding that has been dismissed under rule 75 (2) is reinstated if, before the end of 1 year after the day the proceeding is dismissed, a party to the proceeding files a document in the proceeding.

(4) The party filing the document must serve a copy of the document on each other active party to the proceeding not later than 3 days after the day the document is filed.

Note ***Active party***—see the dictionary.

(5) For any time limit (including a limitation period), a proceeding that is reinstated is taken to have started on the day the originating process for the proceeding was filed in the court and is taken never to have been dismissed.

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Part 2.3 Notice of intention to respond and defence

Division 2.3.1 Notice of intention to respond and defence—general

100 No step without notice of intention to respond or defence

(1) Except with the court's leave, a defendant to an originating claim may take a step in a proceeding only if the defendant has filed in the court—

(a) a notice of intention to respond; or

(b) if the defendant chooses not to file a notice of intention to respond—a defence.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

Note 2 A defendant who proposes to challenge the court's jurisdiction or to assert an irregularity must file a conditional notice of intention to respond (see r 111).

Note 3 A defendant who intends to take no active part in a proceeding must file a notice of intention to respond (see r 106).

Note 4 See

- approved form 2.8 (Notice of intention to respond) AF2015-27
- approved form 2.9 (Defence and counterclaim) AF2015-28.

(2) Subject to rule 106 (Defendant may submit to judgment by notice of intention to respond), if a defendant to an originating claim files an

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unconditional notice of intention to respond in the court, the defendant must also file a defence.

Note 1 Rule 111 (Conditional notice of intention to respond) provides that, if a defendant files a conditional notice of intention to respond, the defendant must apply for an order under r 40 (Setting aside originating process etc). If the defendant fails to apply, or the defendant applies but the application is refused, the conditional notice of intention to respond becomes an unconditional notice of intention to respond, and the defendant must file a defence.

Note 2 See div 2.11.3 (Default by defendant) for the possible consequences of not filing a notice of intention to respond or defence.

Note 3 See also r 279 (Person with legal disability—effect of no notice of intention to respond or defence).

(3) Except with the court's leave, a defendant to an originating application may take a step in a proceeding only if the defendant has filed in the court a notice of intention to respond.

101 Notice of intention to respond or defence—details to be included

(1) A notice of intention to respond filed by the defendant must state—

(a) whether the defendant is represented by a solicitor; and

(b) if the defendant is represented by a solicitor—the name of the solicitor; and

(c) the defendant's address for service; and

(d) if any particulars of the defendant stated in the originating process are incorrect—the correct particulars.

Note 1 See approved form 2.8 (Notice of intention to respond) AF2015-27.

Note 2 ***Address for service*** is defined in the dictionary.

(2) If the defendant to an originating claim chooses not to file a notice of intention to respond, but files a defence, the defence must state—

(a) whether the defendant is represented by a solicitor; and

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(b) if the defendant is represented by a solicitor—the name of the solicitor; and

(c) the defendant's address for service; and

(d) if any particulars of the defendant stated in the originating process are incorrect—the correct particulars.

Note See approved form 2.9 (Defence and counterclaim) AF2015-28.

(3) If the defendant includes corrected particulars of the defendant's name in the notice of intention to respond or defence, the court may amend the originating process accordingly.

102 Notice of intention to respond or defence—filing and service

(1) In a proceeding started by an originating claim, a defendant must file any notice of intention to respond, defence, or notice of intention to respond and defence, not later than the later of the following:

(a) 28 days after the day the claim is served on the defendant;

(b) if the defendant makes an unsuccessful application under rule 40 (Setting aside originating process etc) to have the claim set aside—7 days after the day the application is refused.

(2) However, if, before the defendant files a defence, an application for summary judgment under rule 1146 (Summary judgment—for plaintiff) is served on the defendant, but the court does not on the application dispose of all the claims for relief against the defendant, the court may set a time within which the defendant must file a defence.

Note Pt 6.2 (Applications in proceedings) applies to an application to set a time.

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(3) In a proceeding started by an originating application, a defendant must file a notice of intention to respond not later than the later of the following:

(a) on or before the return date for the application;

(b) if the defendant makes an unsuccessful application under rule 40 to have the originating application set aside—7 days after the day the application is refused.

Note ***Return date*** for an application is defined in the dictionary.

(4) The registrar must seal the original and filed copies of the notice of intention to respond or defence.

Note The registrar may reject a notice of intention to respond or defence that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6141 (Rejecting documents—inconvenient address for service).

(5) The defendant must serve a sealed copy of the notice of intention to respond or defence on the plaintiff at the plaintiff's address for service on the day it is filed in the court.

Note ***Address for service*** is defined in the dictionary.

103 Notice of intention to respond or defence—late filing or service

(1) A defendant may file and serve a notice of intention to respond or defence at any time before judgment, even if the notice or defence is served or filed after the time limited by rule 102.

Note For a defendant to an originating claim, see div 2.11.3 (Default by defendant) for the possible consequences of not filing within the time limited for filing.

(2) If a defendant to an originating claim files and serves a notice of intention to respond after the time limited by rule 102, the defendant

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is not entitled to any extra time for filing and serving a defence or for any other purpose, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

104 Ground of defence arising after defence filed etc

(1) This rule applies if a ground of defence to an originating claim arises after—

(a) a defendant files a defence; or

(b) the time limited by rule 102 (1) (Notice of intention to respond or defence—filing and service) for a defendant to file a defence ends.

(2) The defendant may file a further defence not later than 7 days after the day the ground of defence arises or at a later time with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this subrule.

(3) The registrar must seal the original and filed copies of the further defence.

Note The registrar may reject a further defence that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc).

(4) The defendant must serve a sealed copy of the further defence on the plaintiff at the plaintiff's address for service on the day it is filed in the court.

Note ***Address for service*** is defined in the dictionary.

105 Defence—reliance on defence not disclosed

A defendant in a proceeding started by originating claim may rely at the hearing of the proceeding on a ground of defence not stated in a defence or further defence filed and served by the defendant only if—

(a) the plaintiff agrees; or

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(b) the court gives leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

106 Defendant may submit to judgment by notice of intention to respond

(1) This rule applies if a defendant in a proceeding intends to—

(a) submit to the orders of the court; but

(b) take no active part in the proceeding.

(2) The defendant must—

(a) file a notice of intention to respond; and

(b) include in the notice a statement to the effect that the defendant submits to all orders sought and to judgment in relation to all claims made.

(3) However, the defendant may add to the statement words to the effect that the defendant does not submit in relation to costs.

Example of addition

except as to costs

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) Except with the court's leave, a defendant who has filed a notice of intention to respond that includes the statement mentioned in subrule (2) (b) may not file a defence or affidavit or take any other step in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(5) The court may order that a plaintiff pay a defendant's costs as a submitting party if the defendant—

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(a) files a notice of intention to respond that includes the statement mentioned in subrule (2) (b); and

(b) takes no active part in the proceeding.

(6) If—

(a) a defendant files a notice of intention to respond; and

(b) the defendant is entitled to include in the notice the statement mentioned in subrule (2) (b), but does not include the statement; and

(c) the defendant takes no active part in the proceeding;

the court may order that a plaintiff pay the defendant's costs, but, unless it otherwise orders, the amount awarded for the costs must not be more than the amount that could have been awarded if the statement had been included in the notice.

(7) The court may make an order under subrule (5) or (6) on application by the defendant or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under r (5) or r (6).

(8) If a plaintiff has been ordered to pay costs under subrule (5) or (6), the costs must be included in any costs payable to the plaintiff by any other defendant or opponent of the plaintiff in the proceeding.

107 Notice of intention to respond or defence—several defendants with same solicitor

(1) This rule applies if 2 or more defendants in the same proceeding are represented by the same solicitor at the same time.

(2) The names of all the defendants may be included in a single notice of intention to respond or defence.

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108 Notice of intention to respond or defence—person sued under partnership name

(1) This rule applies if a proceeding is started against a person under a partnership name.

Note See also div 2.4.10 (Partnerships).

(2) Any notice of intention to respond or defence must not be filed in the partnership name.

(3) The person may file a notice of intention to respond or defence only in the person's own name.

(4) If the person files a notice of intention to respond or defence in the person's own name—

(a) the proceeding continues in the partnership name; and

(b) the person must also file a statement of the names and home addresses of all the people who were carrying on business under the partnership name when the cause of action arose (a ***partnership statement***).

(5) The court may order that a notice of intention to respond or defence filed by the person be struck out if the person fails to comply with subrule (4) (b).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(6) Subrules (4) (b) and (5) do not apply if a partnership statement has been filed in the proceeding by another defendant who is a partner in the partnership.

109 Notice of intention to respond or defence—person incorrectly served as partner

(1) If a proceeding is started against a person under a partnership name, the person may file a conditional notice of intention to respond stating—

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(a) the person files the notice because the person was served as a partner; and

(b) the person denies being a partner at the relevant time or being liable as a partner.

(2) On application, the court may, by order—

(a) set aside service of the originating process on the person on the ground that the person is not a partner or is not liable as a partner; or

(b) set aside a conditional notice of intention to respond on the ground that the person is a partner or is liable as a partner.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

(3) The court may give directions about how to decide the liability of the person or the liability of the partners.

(4) This rule does not limit rule 111 (Conditional notice of intention to respond).

110 Notice of intention to respond or defence—person sued under business name

(1) This rule applies if a proceeding is started against a person in a business name that is not the person's own name, whether or not the business name is registered under the *Business Names Registration Act 2011* (Cwlth).

Note See also div 2.4.11 (Business names).

(2) Any notice of intention to respond or defence must not be filed in the business name.

(3) The person may file a notice of intention to respond or defence only in the person's own name.

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(4) If the person files a notice of intention to respond or defence in the person's own name—

(a) the proceeding continues in the business name until the amendments mentioned in rule 292 (3) (Business names—amendment about parties) are made; and

Note Rule 292 (3) provides that the plaintiff must make the amendments necessary for the proceeding to be continued against a named defendant and not in the business name.

(b) the person must also file a statement of the names and home addresses of all the people who were carrying on business under the business name when the cause of action arose (a ***business name statement***).

(5) The court may order that a notice of intention to respond or defence filed by the person be struck out if the person fails to comply with subrule (4) (b).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(6) Subrules (4) (b) and (5) do not apply if a business name statement has been filed in the proceeding by another defendant who is carrying on business under the business name.

111 Conditional notice of intention to respond

(1) If a defendant proposes to challenge the court's jurisdiction or to assert an irregularity, the defendant must file a conditional notice of intention to respond.

Note See also r 109 (Notice of intention to respond or defence—person incorrectly served as partner).

(2) If a defendant files an unconditional notice of intention to respond or defence, the defendant is taken to have submitted to the court's jurisdiction, and waived any irregularity in the proceeding or defect in service of the originating process.

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(3) If a defendant files a conditional notice of intention to respond, the defendant must apply for an order under rule 40 (Setting aside originating process etc) not later than 28 days after the day the notice is filed.

(4) If the defendant does not apply for an order under rule 40 before the end of the 28-day period, or the defendant applies but the application is refused, the conditional notice of intention to respond becomes an unconditional notice of intention to respond.

(5) If the conditional notice of intention to respond becomes an unconditional notice of intention to respond and the proceeding was started by originating claim, the defendant must file a defence not later than 14 days after the day the conditional notice becomes an unconditional notice.

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Division 2.3.2 Notice of intention to respond and defence—proceedings in Supreme Court for possession of land

150 Application—div 2.3.2

This division applies only in relation to a proceeding in the Supreme Court for the possession of land.

151 Proceeding for possession of land—leave to file defence etc

(1) If a person who is in possession of the land, or part of it, (either directly or by a tenant) is not named in the originating process for the proceeding, the person may apply to the Supreme Court for leave to file a notice of intention to respond or defence.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) The application must be supported by an affidavit—

(a) showing the person is in possession of the land or part of it; and

(b) stating how the person is in possession.

(3) The court may give leave for the person to file the notice or defence.

Note Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

(4) If the person is in possession of only part of the land, the leave may be limited to that part of the land.

152 Proceeding for possession of land—filing defence etc

(1) If the court gives a person leave under rule 151 to file a notice of intention to respond or defence, the person must file the notice or defence—

(a) not later than 7 days after the day the leave is given; or

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(b) if the court makes an order about when it must be filed—in accordance with the order.

Note See

- approved form 2.8 (Notice of intention to respond) AF2015-27
- approved form 2.9 (Defence and counterclaim) AF2015-28.

(2) If the person files the notice or defence as lessor of the land, the person must include in the notice or defence a statement that the person is responding to the claim as lessor.

(3) On the filing by a person of a notice of intention to respond or defence under this rule, the person is taken, for all purposes, to be a defendant in the proceeding.

153 Proceeding for possession of land—service of defence etc

(1) If a person files a notice of intention to respond or defence under rule 152, the person must serve the following (the ***relevant documents***) on every other active party to the proceeding:

(a) a sealed copy of the notice or defence;

(b) a stamped copy of the affidavit mentioned in rule 151 (2) (Proceeding for possession of land—leave to file defence etc).

Note ***Active party*** is defined in the dictionary.

(2) The person must serve the relevant documents—

(a) not later than 7 days after the day the notice or defence is filed; or

(b) if the court makes an order about when they must be served—in accordance with the order.

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Part 2.4 Parties and proceedings

Division 2.4.1 Including causes of action

200 Including causes of action

(1) A plaintiff may, whether seeking relief in the same or different capacities, include in the same proceeding as many causes of action as the plaintiff has against a defendant.

(2) However, for the Magistrates Court, causes of action may be included in the same proceeding only if the total amount claimed in the proceeding is not more than the maximum amount for which the court has jurisdiction.

(3) Also, a claim by a trustee in bankruptcy must not be included with a claim by the trustee in any other capacity except with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(4) This rule is subject to rule 202 (Including causes of action inconveniently etc).

201 Joint and separate claims

Claims by plaintiffs jointly may be included with claims by them or any of them separately against the same defendant.

202 Including causes of action inconveniently etc

(1) This rule applies if the court considers that including a cause of action in a proceeding—

(a) may unfairly prejudice another party; or

(b) may delay the conduct of the proceeding; or

(c) is otherwise inconvenient.

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(2) The court may—

(a) order separate trials; or

(b) make any other order (including about costs) it considers appropriate.

Examples for par (b)

1 an order for costs in favour of a party for attending a part of a trial in which the party has no interest

2 an order relieving a party from attending a part of a trial in which the party has no interest

3 an order staying the proceeding against a defendant until the trial between the plaintiff and another defendant is decided, on condition that the defendant is bound by the findings of fact in the trial against the other defendant

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The court may make an order under this rule on application by a defendant to the proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.4.2 Including and substituting parties

210 Necessary parties

Each person whose presence as a party is necessary to enable the court to adjudicate effectively and completely on all issues in dispute in a proceeding must be included as a party to the proceeding.

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211 Including parties—common issues of law or fact

(1) Two or more people may be included as plaintiffs or defendants in a proceeding—

(a) if—

(i) separate proceedings by or against each of them may give rise to a common issue of law or fact; and

(ii) any of the rights to relief claimed in the proceeding (whether joint, several or alternative) are in relation to, or arise out of, the same transaction or event or series of transactions or events; or

(b) if the court orders that they be included.

(2) A person included as a plaintiff under subrule (1) must not start a proceeding against the defendant in relation to the same cause of action unless the court gives leave.

(3) If an application for an order under subrule (1) (b) or leave under subrule (2) is made during the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(4) For the Supreme Court, if an application for an order under subrule (1) (b) or leave under subrule (2) is made before the proceeding starts, the application must be made by originating application.

212 Including parties—defendants may be sued jointly, severally, or in alternative

(1) If a plaintiff claims a right to relief against a person in a proceeding (whether jointly, severally or in the alternative), the person may be included as a defendant in the proceeding.

(2) The court may enter judgment against any defendant found to be liable in accordance with the defendant's proportionate liability.

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(3) This rule is subject to the *Civil Law (Wrongs) Act 2002*, chapter 7A (Proportionate liability).

213 Including parties—joint entitlement

(1) If a plaintiff seeks relief to which someone else is entitled jointly with the plaintiff, everyone entitled to the relief must be parties to the proceeding.

(2) A person entitled to seek relief who does not agree to be a plaintiff must be included as a defendant.

(3) This rule does not require a person to be included if another law provides that the person need not be included or must not be included.

Example

The *Bankruptcy Act 1966* (Cwlth), s 62 (Actions on joint contracts) provides that if a bankrupt is a contractor in relation to a contract jointly with someone else or other people, the person or people may sue or be sued in relation to the contract without joining the bankrupt.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

214 Including parties—joint or several liability

(1) If a plaintiff seeks relief against a defendant who is liable jointly and severally with someone else, the other person need not be made a defendant to the proceeding.

(2) If people are liable jointly, but not severally, and a plaintiff seeks relief in a proceeding against some but not all of them, the court may stay the proceeding until the others are included as defendants.

Note Pt 6.2 (Applications in proceedings) applies to an application for a stay.

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215 Including parties—plaintiff in doubt about defendant etc

Two or more people may be included as defendants in a proceeding if—

(a) there is doubt about—

(i) the person from whom the plaintiff is entitled to relief; or

(ii) the respective amounts for which each may be liable; or

(b) they have all caused damage or loss to the plaintiff, whether or not there is a factual connection between the claims apart from the involvement of the plaintiff.

216 Including defendants—identical interest in relief unnecessary

(1) It is not necessary for every defendant to be interested in all the relief sought or in every cause of action included in a proceeding.

(2) However, the court may make any order it considers appropriate to stop the defendant being prejudiced or put to expense by being required to attend any proceeding in which the defendant has no interest.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

217 Including parties inconveniently etc

(1) If the court considers that including a party to a proceeding may unfairly prejudice another party, may delay the conduct of the proceeding or is otherwise inconvenient, it may—

(a) order separate trials; or

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(b) make any other order (including about costs) it considers appropriate.

Examples for par (b)

1 an order for costs in favour of a party for attending a part of a trial in which the party has no interest

2 an order relieving a party from attending a part of a trial in which the party has no interest

3 an order staying the proceeding against a defendant until the trial between the plaintiff and another defendant is decided, on condition that the defendant is bound by the findings of fact in the trial against the other defendant

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The court may make an order under this rule on application by a party to the proceeding (other than a plaintiff) or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

218 Including parties—parties incorrectly included or not included

Despite rule 213 (Including parties—joint entitlement), the court may decide a proceeding even if a person is incorrectly included or not included as a party and may deal with the proceeding as it affects the rights of the parties before it.

219 Counterclaim or set-off when co-plaintiff wrongly included

(1) This rule applies if—

(a) a person has been incorrectly or unnecessarily included as a co-plaintiff in a proceeding; and

(b) the defendant has set up a counterclaim or set–off.

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(2) The defendant may get the benefit of the counterclaim or set-off by proving the claim or set-off against the parties other than the co-plaintiff.

(3) The defendant's entitlement under subrule (2) is not affected by—

(a) the inclusion of the co-plaintiff; or

(b) any proceeding resulting from the inclusion.

220 Court may include party if appropriate or necessary

(1) The court may order that a person be included as a party to a proceeding if—

(a) the person ought to have been included as a party; or

(b) including the person as a party is necessary to enable the court to adjudicate effectively and completely on all issues in dispute in the proceeding.

(2) The court may make an order under this rule—

(a) at any stage of the proceeding; and

(b) on application by the person or a party to the proceeding or on its own initiative; and

(c) whether the person to be included should be a plaintiff or defendant.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

221 Plaintiffs may be included or substituted

(1) This rule applies if a proceeding has been started in the name of the wrong person as plaintiff or there is doubt whether the proceeding has been started in the name of the right person as plaintiff.

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(2) The court may order that someone else, or other people, be included or substituted as plaintiff if satisfied—

(a) that starting the proceeding in the wrong name was a genuine mistake; and

(b) that it is necessary to enable the court to adjudicate effectively and completely on all issues in dispute in the proceeding.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

222 Inclusion or substitution as plaintiff requires agreement

A person may be included or substituted as a plaintiff in a proceeding only if the person agrees to be included or substituted.

223 Including parties—procedure

(1) An application by a person to be included as a party to a proceeding must be supported by an affidavit showing the person's interest in—

(a) the issues in dispute in the proceeding; or

(b) an issue in dispute to be decided between the person and a party to the proceeding.

(2) An application to include a person as a defendant must be served on all active parties to the proceeding and on the person.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application mentioned in this rule.

Note 2 ***Active party*** is defined in the dictionary.

224 Including parties—inclusion to recover costs

(1) A party must not include someone else as a party to a proceeding for the purpose of applying for costs against the person.

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(2) This rule does not apply if—

(a) the person would otherwise be an appropriate or necessary party to the proceeding; or

(b) the party includes the person by way of a third-party notice in relation to a claim for costs against the party.

Division 2.4.3 Changing parties

230 Removing parties

(1) The court may order that a person be removed as a party to a proceeding if the person—

(a) has been inappropriately or unnecessarily included as a party; or

(b) has stopped being an appropriate or necessary party.

(2) The court may make an order under this rule—

(a) at any stage of the proceeding; and

(b) on application by a party to the proceeding or on its own initiative; and

(c) whether the person to be removed is a plaintiff or defendant.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

231 Party becomes bankrupt, dies or becomes person with mental disability

(1) This rule applies if—

(a) a party to a proceeding becomes bankrupt, or dies, during the proceeding, but a cause of action in the proceeding survives; or

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(b) a party to a proceeding becomes a person with a mental disability during the proceeding.

Note ***Person with a mental disability*** is defined in the dictionary.

(2) The proceeding is not suspended and does not end.

(3) However, a person must not take a further step in the proceeding for or against the party unless—

(a) the court gives the person leave to continue the proceeding; and

(b) the person complies with the conditions (if any) of the leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave and an order or directions under this rule.

(4) The court may make any order it considers appropriate about including, removing, substituting or rearranging parties.

(5) However, if someone is made a party in place of a party who has become bankrupt or died, but the person is already a party on the other side of the proceeding, the court must order the person to cease to be a party on the other side.

(6) The court may make an order under this rule—

(a) on application by a party to the proceeding or anyone to whom an interest or liability in the proceeding has passed; or

(b) on its own initiative.

(7) An application for an order under this rule must be served on everyone who could be affected by the order.

(8) Before making an order under this rule because a party has died, the court may require notice to be given to—

(a) an insurer of the deceased party who has an interest in the proceeding; and

(b) anyone else who has an interest in the deceased party's estate.

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(9) An insurer or other person given notice is entitled to be heard on the hearing of the application.

(10) A sealed copy of an order made under this rule must be served on all parties, including a party (other than any applicant for the order) who has been included, removed or substituted.

(11) The court may give directions about the service of the order.

(12) If—

(a) a party who has died does not have a personal representative and the court orders that a person be substituted as a party for the party; and

(b) a grant of probate or administration is later made;

the person must give the personal representative a copy of all documents in the person's possession relating to the proceeding.

232 Amending or setting aside order for new party made on death etc of party

(1) If a person is made a party under rule 231 (4), the person may apply to have the order making the person a party amended or set aside.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The application must be made not later than 14 days after—

(a) if the person is a person with a legal disability who does not have a litigation guardian—the day a litigation guardian is appointed; or

(b) in any other case—the day a sealed copy of the order is served on the person.

Note 1 ***Person with a mental disability*** is defined in the dictionary.

Note 2 Div 2.4.9 deals with the appointment of a litigation guardian.

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(3) On application under this rule, the court may amend or set aside the order.

(4) If the person made a party under rule 231 (4) is a person with a legal disability who does not have a litigation guardian, the order under the subrule does not apply to the person during the period an application can be made to the court under this rule.

233 Failure to proceed after death of party

(1) This rule applies to a proceeding if—

(a) a party to the proceeding dies during the proceeding, but a cause of action in the proceeding survives the party's death; and

(b) an order to substitute a person for the deceased party has not been made at the end of 3 months after the day of the death.

(2) If the deceased party is a plaintiff, the court may order that the proceeding in relation to the cause of action be dismissed in relation to the plaintiff, and the defendant have judgment on any counterclaim against the plaintiff, if an application to substitute a person for the deceased party is not made within a stated time.

(3) If the deceased party is a defendant, the court may order that judgment be entered for the plaintiff against the defendant, and any counterclaim by the defendant be dismissed, if an application to substitute a person for the deceased party is not made within a stated time.

(4) An application for an order under this rule may be made by anyone to whom the deceased party's interest or liability in relation to the cause of action has passed (whether or not a party to the proceeding).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Division 2.4.4 Included or changed parties—future conduct of proceedings

240 Application—div 2.4.4

This division applies if the court makes an order under division 2.4.2 (Including and substituting parties) or division 2.4.3 (Changing parties) in a proceeding.

241 Included or substituted defendant—filing and service of amended originating process

If the court orders that a person be included or substituted as a defendant in the proceeding—

(a) the plaintiff must—

(i) file an amended originating process in the court; and

(ii) serve the person with a sealed copy of the amended originating process in accordance with these rules as if the person were an original defendant to be served with the originating process; and

Note An originating process must be served personally, unless otherwise provided by these rules (see r 54 (2) and r 61 (3)). See pt 6.8 (Service) about other ways an originating process may be served.

(b) the person must file a notice of intention to respond or defence as required by the order.

242 Included or substituted parties—date proceeding taken to start

(1) This rule applies if the court orders that a person be included or substituted as a party in the proceeding.

(2) The date the proceeding starts in relation to the person is taken to be—

(a) the date when the order is made; or

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(b) if another date is stated in the order—that date.

(3) However, an earlier date must not be stated in the order if the inclusion or substitution of the person on that date would bring the start of the proceeding within a limitation period applying to the person.

243 Included or substituted parties—effect of action previously taken in proceeding

(1) Unless the court otherwise orders—

(a) if the court orders that a person be included as a party in the proceeding—the proceeding continues as if the person were an original party to the proceeding; and

(b) if the court orders that a person be substituted for a party or former party in the proceeding—everything previously done in the proceeding has the same effect in relation to the new party as it had in relation to the previous party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) If the previous party was a defendant, subrule (1) (b) does not apply to the following:

(a) the filing of a notice of intention to respond or defence by the previous party;

(b) an admission made by the previous party;

(c) an order for costs in favour of, or against, the previous party.

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244 Included or changed parties—other orders about future conduct of proceeding

The court may also make any order it considers appropriate for the future conduct of the proceeding, including, for example, an order about—

(a) serving the order, and other documents; and

(b) amending documents; and

(c) filing a notice of intention to respond or defence by a person included or substituted as a defendant.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of the rule, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 2.4.4A Representation in proceedings for personal injuries

245 Separate representation of defendant for insurer's period on risk

(1) A defendant in a proceeding in relation to a personal injury claim may be separately represented in the proceeding for each insurer on risk in relation to the claim.

(2) These rules apply to the defendant as if, for each separate representation, the defendant were a separate party.

(3) A notice of intention to respond or, if a notice is not filed, a defence, filed in relation to the separate representation must state the risk to which the notice or defence relates.

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Division 2.4.5 Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1

250 One proceeding for benefit of members of deceased person's family

(1) Not more than 1 proceeding under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death) may be started against a person in relation to a death.

(2) The proceeding must be started by the deceased person's personal representative for the benefit of the members of the person's family (the ***beneficiaries***) who suffered damage or loss because of the death.

(3) However, if the proceeding has not been started by the personal representative at the end of 6 months after the day of the death, any 1 or more of the beneficiaries may start the proceeding.

(4) The proceeding mentioned in subrule (3) must be for the benefit of the same people and subject to the same provisions and procedures (with any necessary changes) as if it were started by the deceased person's personal representative for the benefit of the beneficiaries.

251 Orders in proceedings for compensation to relatives in death claims

(1) If—

(a) a proceeding under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death) is started in the court; and

(b) the court is satisfied that a person whose name is not included in the names of the people for whose benefit the proceeding is stated to have been started is a person whose name should have been included;

the court may order that the proceeding continue as if the name of the person had been included.

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(2) The court may make an order under subrule (1)—

(a) on application by the person; or

(b) on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) In a proceeding under the *Civil Law (Wrongs) Act 2002*, part 3.1, the court may order that any 1 or more of the people for whose benefit the proceeding has been started must be separately represented by a legal practitioner.

(4) If the court makes an order under this rule, it may, at the same time or later, make the orders about procedure in the proceeding that it considers appropriate.

(5) The powers of the court under this rule are additional to any other powers of the court.

Division 2.4.6 Representation—trustees and personal representatives

255 Application—div 2.4.6

This division does not apply to a proceeding to which division 2.4.5 (Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1) applies.

256 Representation—by trustees and personal representatives

(1) A proceeding in relation to a trust, or a deceased person's estate, may be started or continued by or against the trustees, or personal representatives, without including anyone with a beneficial interest in or claim against the trust or estate (a ***beneficiary***).

(2) Subrule (1) has effect despite rule 213 (Including parties—joint entitlement).

(3) In a proceeding mentioned in subrule (1)—

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(a) the trustees or personal representatives are taken to represent every beneficiary; and

(b) an order made in the proceeding is binding on every beneficiary.

(4) However, the court may order that an order does not bind a beneficiary if satisfied that the trustee or personal representative did not in fact represent the beneficiary.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) Also, the court may, at any stage in the proceeding, order that a beneficiary be made a party to the proceeding in addition to or instead of an existing party.

(6) This rule applies to trustees and personal representatives in a proceeding to enforce a security by foreclosure or otherwise.

257 Representation—trustees and personal representatives must be parties

(1) In a proceeding in relation to a deceased person's estate, all personal representatives must be parties.

(2) In a proceeding in relation to a trust, all trustees must be parties.

(3) In a proceeding started by trustees or personal representatives, a trustee or personal representative who does not agree to being included as a plaintiff must be made a defendant.

258 Representation—beneficiaries and claimants

(1) In a proceeding in relation to a deceased person's estate, everyone having a beneficial interest in or claim against the estate need not be parties, but the plaintiff may make parties of any of them the plaintiff considers appropriate.

(2) In a proceeding in relation to a trust, everyone having a beneficial interest under the trust need not be parties, but the plaintiff may make parties of any of them the plaintiff considers appropriate.

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(3) This rule has effect despite rule 213 (Including parties—joint entitlement).

259 Representation—proceeding about administration of deceased person's estate or trust property

(1) If 2 or more people are or may be interested in or affected by a proceeding in relation to either or both of the following matters, the court may appoint 1 or more of them to represent all or some of them:

(a) the administration of a deceased person's estate;

(b) property subject to a trust.

Note Pt 6.2 (Applications in proceedings) applies to an application for an appointment.

(2) The court must not appoint a person under subrule (1) unless satisfied—

(a) that the interested or affected people (or some of them) cannot, or cannot readily, be identified; or

(b) that the interested or affected people (or some of them), although identified, cannot be found; or

(c) that, although all of the interested or affected people have been identified and found, it is appropriate for a representative to be appointed to represent all or some of them.

(3) If the court makes an order under subrule (1) appointing 2 or more people, it may give the conduct of the proceeding, or any part of the proceeding, to the person it considers appropriate.

(4) For this rule, people may be taken to have an interest or liability even if—

(a) in relation to 1 or more of them—the interest or liability is a contingent or future interest or liability; or

(b) 1 or more of them is an unborn child.

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(5) This rule does not limit the operation of rule 261 (Representation—interests of deceased person's estate).

260 Representation—orders bind represented people in estate or trust proceeding

(1) This rule applies if a person (the ***appointed person***) has been appointed under rule 259 (1) to represent another person or other people in a proceeding.

(2) An order made in the proceeding is binding on everyone represented by the appointed person as if the represented person were a party to the proceeding.

261 Representation—interests of deceased person's estate

(1) This rule applies to a proceeding if the court is satisfied—

(a) that a deceased person's estate has an interest in or is affected by the proceeding, but is not represented in the proceeding; or

(b) that the personal representative of the deceased person has an interest in the proceeding adverse to the interests of the deceased person's estate.

(2) The court may—

(a) order that the proceeding continue in the absence of the personal representative; or

(b) by order, appoint a personal representative for the deceased person's estate for the proceeding.

(3) The court may make an order under this rule on the application of a person interested in the deceased person's estate or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(4) The court must not appoint a person under subrule (2) (b) unless the person agrees to the appointment.

(5) If the court orders that the proceeding continue in the absence of a personal representative for the deceased person's estate, any order made under this rule, and any order subsequently made in the proceeding, is binding on the estate as if a personal representative were a party to the proceeding.

(6) Before making an order under this rule on application, the court may order that notice of the application be given to anyone with an interest in the estate it considers appropriate.

Division 2.4.7 Representation—numerous concurrent interests

265 Application—div 2.4.7

This division does not apply to a proceeding to which either of the following divisions applies:

(a) division 2.4.5 (Proceedings under Civil Law (Wrongs) Act 2002, pt 3.1);

(b) division 2.4.6 (Representation—trustees and personal representatives).

266 Representation—numerous concurrent interests

(1) If numerous people have the same interest or liability in a proceeding, the proceeding may be started and, unless the court otherwise orders, continued by or against any 1 or more of them as representing all of them.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) At any stage in the proceeding, the plaintiff may apply to the court for an order appointing any 1 or more of numerous defendants, or

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other people whom the defendants represent in the proceeding, to represent all defendants in the proceeding.

(3) If the court appoints a person under subrule (2) who is not a defendant in the proceeding, it must include the person as a defendant in the proceeding under rule 220 (Court may include party if appropriate or necessary).

(4) If the court appoints 2 or more people under subrule (2), it may give the conduct of the proceeding, or any part of the proceeding, to the person it considers appropriate.

267 Orders in div 2.4.7 proceeding bind represented people

(1) An order made in a proceeding against or in favour of a party who represents others under this division—

(a) is binding on everyone represented by the party in the proceeding; but

(b) is not enforceable against or by a person who is not a party to the proceeding without the court's leave.

(2) An application for leave under subrule (1) (b) must be served on the person against whom the enforcement of the order is sought as if the application were an originating process.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

(3) This rule does not prevent a person against whom an order is sought to be enforced from disputing liability because of circumstances peculiar to the person.

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Division 2.4.8 Multiple proceedings

270 Consolidation etc of proceedings

(1) This rule applies if, in relation to 2 or more proceedings, it appears to the court that—

(a) a common issue of law or fact arises; or

(b) the relief sought in each of the proceedings is in relation to, or arises out of, the same transaction or event or series of transactions or events; or

(c) a decision in a proceeding will decide or affect the other proceeding or proceedings; or

(d) it is otherwise desirable to make an order under this rule.

(2) The court may order that—

(a) the proceedings be consolidated; or

(b) the proceedings be heard together or in a particular sequence; or

(c) any of the proceedings be stayed until any other of the proceedings have been decided.

Note Consolidation results in the proceedings becoming a single proceeding and, for example, only 1 judgment is given in the consolidated proceeding.

(3) The court may make an order under this rule on application by a party to any of the proceedings or on its own initiative.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

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(4) If the court orders that proceedings be consolidated or heard together or in a particular sequence, it may give the directions it considers appropriate for the conduct of the proceeding or proceedings.

(5) Before or during the hearing of a consolidated hearing or of hearings ordered to be heard together or in a particular sequence, the court may order that the proceedings be separated or heard in another sequence.

Division 2.4.9 People with a legal disability

275 Person with legal disability—litigation guardian to start proceeding etc

(1) Unless a territory law otherwise provides, a person with a legal disability may start or defend, and carry on, a proceeding only by the person's litigation guardian.

Example—territory law otherwise providing

The *Court Procedures Act 2004*, s 74E provides that in a proceeding in a court in relation to a child or young person, the child or young person may be represented by a lawyer or litigation guardian, or both.

Note 1 ***Person with a legal disability*** is defined in the dictionary.

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) However, a child may start, and carry on, a proceeding in the Magistrates Court to recover wages, salary or any other amount owing to the child in relation to the child's employment, or a contract for services for the doing of work by the child, as if the child were an adult.

(3) Anything in a proceeding (including a related enforcement proceeding) required or allowed by these rules to be done by a party may be done only by the party's litigation guardian if the party is a person under a legal disability.

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(4) However, part 2.8 (Disclosure) applies to a party who is a person under a legal disability as if the person were not a person under a legal disability.

(5) An act required to comply with an order under part 2.8 may be performed by—

(a) if the party can perform it—the party; or

(b) in any other case—the party's litigation guardian.

(6) A party's litigation guardian who is not a legal practitioner may act only by a solicitor.

276 Who may be litigation guardian

(1) A person may be a litigation guardian of a person with a legal disability for a proceeding if the person—

(a) is not a person with a legal disability; and

(b) has no interest in the proceeding adverse to the interests of the person with a legal disability; and

(c) has agreed to be the person's litigation guardian.

(2) If a person is authorised under a territory law to conduct a proceeding in the name of or for (however described) a person with a legal disability, the authorised person is entitled to be litigation guardian of the person with a legal disability in any proceeding to which the authorised person's authority extends, unless the court otherwise orders.

Examples

1 The *Guardianship and Management of Property Act 1991*, s 7 (3) provides that a person's guardian may be given the power by the ACAT to bring or continue a proceeding for or in the name of the person.

2 That Act, s 8 provides that the ACAT may appoint a manager to manage a person's property. The powers that may be given to a person's manager are the powers that the person would have if the person were legally competent to exercise powers in relation to the person's property.

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Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

277 Litigation guardian—liability for costs

(1) A litigation guardian for a plaintiff is liable for any costs for which the plaintiff would have been liable if the plaintiff were not a person with a legal disability.

(2) An order for costs against the plaintiff or the litigation guardian may be enforced against the litigation guardian.

(3) A litigation guardian for a defendant is not liable for any costs in a proceeding unless the costs are incurred because of the litigation guardian's negligence or misconduct.

278 Becoming a litigation guardian

(1) Unless a territory law otherwise provides, a person may become the litigation guardian of a person with a legal disability without the need for any formal instrument of appointment or any order of a court.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) Unless a person is appointed as a litigation guardian by the court, a person becomes the litigation guardian of a person with a legal disability for a proceeding by filing in the court—

(a) an affidavit by the solicitor for the person with a legal disability, or someone else with knowledge of the facts, stating that the person—

(i) has agreed to be the litigation guardian; and

(ii) is an appropriate person to be the litigation guardian; and

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(iii) does not have an interest in the proceeding adverse to the interest of the person with a legal disability; and

(b) the person's written consent to be the litigation guardian of the person with a legal disability; and

(c) if the person with a legal disability is a plaintiff in the proceeding—an undertaking by the person that the person will be liable for any costs that the person with a legal disability might otherwise be required to pay in the proceeding.

Note See

- approved form 2.10 (Affidavit for person to act as litigation guardian) AF2006-255
- approved form 2.11 (Consent and undertaking by person to act as litigation guardian) AF2006-256.

279 Person with legal disability—effect of no notice of intention to respond or defence

(1) If a defendant who is a person with a legal disability does not file a notice of intention to respond or defence within the time limited by these rules, the plaintiff may not continue the proceeding unless someone is made litigation guardian of the defendant.

(2) This rule has effect despite division 2.11.3 (Default by defendant).

280 Litigation guardian—appointment and removal by court

(1) A person may not replace someone else as litigation guardian of a person with a legal disability except by an order of the court.

(2) If a party to a proceeding is or becomes a person with a legal disability and the party does not have a litigation guardian, the court may, by order, appoint a litigation guardian.

(3) If a party to a proceeding is or becomes a person with a legal disability and the party has a litigation guardian, the court may, by order, remove the party's litigation guardian and appoint another litigation guardian.

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(4) In a proceeding in relation to a person with a legal disability who is not a party, the court may, by order, appoint a litigation guardian of the person and include the person as a party to the proceeding.

(5) If the court removes a party's litigation guardian, it may also, by order, stay the proceeding until the appointment of a new litigation guardian.

(6) An application for an order under this rule must be served on the person with a legal disability and, if the application proposes removal of a litigation guardian, on the litigation guardian.

(7) In a proceeding on an application for the appointment of a litigation guardian, evidence in support of the application must include evidence—

(a) that the party for whom a litigation guardian is to be appointed is a person with a legal disability; and

(b) that the proposed litigation guardian agrees to being appointed and does not have an interest in the proceeding adverse to the interests of the person with a legal disability.

(8) The court may make an order under this rule on application by a party to the proceeding or anyone else or on its own initiative.

(9) If an application for an order under this rule is made during the proceeding or after judgment is given in the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(10) For the Supreme Court, if an application for an order under this rule is made before the proceeding starts, the application must be made by originating application.

281 Litigation guardian—accounts

Division 2.9.5 (Receivers) applies in relation to a litigation guardian's accounts, with any necessary changes, in the same way as it applies to a receiver's accounts.

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282 Person with legal disability—approval of settlement etc

(1) In a proceeding (or proposed proceeding) in which there is a claim for an amount (including an amount of damages) by or on behalf of a person with a legal disability, a settlement or compromise may only be entered into, and an amount paid into court may only be accepted, with the court's approval.

(2) The application for the court's approval must be made by originating application, unless the application is made in a proceeding that has already been started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for the court's approval in a proceeding that has already been started.

(3) If the court approves a settlement, compromise or acceptance of an amount paid into court, the court may enter judgment for the amount of the settlement, compromise or payment into court.

(4) This rule applies whether the person is suing alone or with another party.

Division 2.4.10 Partnerships

285 Meaning of *partnership proceeding*—div 2.4.10

In this division:

partnership proceeding means a proceeding started by or against a partnership in the partnership name, and includes a proceeding between a partnership and 1 or more of its partners.

Note See also r 108 (Notice of intention to respond or defence—person sued under partnership name) and r 109 (Notice of intention to respond or defence—person incorrectly served as partner).

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286 Proceeding in partnership name

(1) Two or more partners may start a proceeding in the partnership name.

(2) A proceeding against people claimed to be partners may be started against the claimed partnership in the partnership name.

(3) The partnership name used in a partnership proceeding must be the name of the partnership when the cause of action arose.

(4) For an incorporated limited partnership, the name of the partnership when the cause of action arose is the name in which the partnership was registered under the *Partnership Act 1963*, section 59 (Registration of incorporated limited partnership) when the cause of action arose.

(5) Unless the court otherwise orders, a partnership proceeding must continue in the partnership name and not in the name of the individual partners.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

287 Disclosure of partners' names

(1) At any stage of a partnership proceeding, a party may by notice served on the partnership require the partnership to give the party the names and home addresses of all of the people who were partners in the partnership when the cause of action arose.

Note Rule 6433 deals with service of an originating process on a partnership.

(2) The notice must state a date for compliance with the notice that is at least 2 days after the day the notice is served on the partnership.

(3) If the partnership does not give the party the information required by the notice, the court may make any order it considers appropriate, including an order—

(a) staying the proceeding until the information is given; and

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(b) striking out a pleading or affidavit.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.4.11 Business names

290 Proceeding in registered business name

A proceeding may be started against a name registered under the *Business Names Registration Act 2011* (Cwlth).

291 Proceeding in business name if unregistered etc

(1) This rule applies to a business name under which business is being carried on by a person in contravention of the *Business Names Registration Act 2011* (Cwlth) because—

(a) the name is not registered under that Act; or

(b) the name is registered under that Act, but is not registered in relation to the person; or

(c) the name is registered under that Act in relation to the person but the person has not complied with that Act, section 12 (Notification of changes in particulars relating to registered business names etc) in relation to the name.

(2) If a proceeding is started against the person under the business name, the following provisions apply:

(a) the proceeding is not invalid only because of the contravention;

(b) the business name is a sufficient designation of the person in any process in or in relation to the proceeding until the plaintiff makes the amendments mentioned in rule 292 (3).

Note See r 110 (Notice of intention to respond or defence—person sued under business name).

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292 Business names—amendment about parties

(1) This rule applies to a business name under which business is being carried on by a person in contravention of the *Business Names Registration Act 2011* (Cwlth) because—

(a) the name is not registered under that Act; or

(b) the name is registered under that Act, but is not registered in relation to the person.

(2) If a proceeding is started against the person under the business name, the plaintiff must take all reasonable steps to find out the person's name.

(3) The plaintiff must also make the amendments necessary for the proceeding to be continued against a named defendant and not in the business name.

(4) Until the amendments are made, the plaintiff may only take a step in the proceeding with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(5) Subrule (4) does not apply to—

(a) the filing or service of an originating process; or

(b) the filing or service of an application under rule 650 (Discovery to identify potential defendant) or rule 651 (Discovery to identify right to claim relief); or

(c) the filing or service of an application for an order under rule 706 (Urgent orders before start of proceeding); or

(d) a step taken to comply with this rule; or

(e) the filing or service of an application for leave under subrule (4).

(6) An amendment for this rule must be made in accordance with rule 509 (Amendment—procedure) and served in accordance with rule 511 (Amendment—service of amended document).

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(7) This rule applies in addition to part 2.7 (Amendment).

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Part 2.5 Third-party and similar proceedings

300 Purpose—pt 2.5

The purpose of this part is to provide for a third-party procedure in proceedings started by originating claim.

Note A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

301 When a third-party proceeding starts

A third-party proceeding starts on the day the third-party notice for the proceeding is filed in the court.

Note Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

302 Third-party proceeding—when available

A defendant may file a third-party notice if the defendant wants to—

(a) claim a contribution or indemnity against a person who is not already a party to the proceeding; or

(b) claim relief against a person who is not already a party to the proceeding that—

(i) relates to or is connected with the original subject matter of the proceeding; and

(ii) is substantially the same as some relief claimed by the plaintiff; or

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(c) require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the plaintiff and defendant but also between either of them and a person not already a party to the proceeding.

303 Third-party notice—content etc

(1) A third-party notice must state briefly and specifically the nature of the claim made and relief sought.

Note See approved form 2.12 (Third-party notice) AF2006-257.

(2) A statement of claim must be attached to the third-party notice.

Note 1 See

- approved form 2.2 (Statement of claim—debt or liquidated demand) AF2007-60
- approved form 2.3 (Statement of claim—motor vehicle death or personal injury) AF2014-160
- approved form 2.4 (Statement of claim—employment death or personal injury) AF2014-26
- approved form 2.6 (Statement of claim—general) AF2006-447.

Note 2 See r 305 (Third-party notice—statement of claim for certain personal injuries claims).

Note 3 A statement of claim is a pleading (see dict, def ***pleading***) and therefore must comply with pt 2.6 (Pleadings).

Note 4 ***Attached*** to a document is defined in the dictionary.

(3) A third-party notice filed in the Magistrates Court, or the attached statement of claim, must show that the court has jurisdiction to decide the claim.

Note The *Magistrates Court Act 1930*, pt 4.2 (Civil jurisdiction) deals with the civil jurisdiction of the Magistrates Court under that Act.

(4) A third-party notice must state—

(a) whether the defendant is represented by a solicitor; and

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(b) if the defendant is represented by a solicitor—the name of the solicitor; and

(c) the defendant's address for service; and

(d) if the defendant is suing in a representative capacity—the representative capacity in which the defendant is suing; and

(e) if a third party is being sued in a representative capacity—the representative capacity in which the third party is being sued.

Note ***Address for service*** is defined in the dictionary.

(5) A third-party notice must state specifically any claim for—

(a) exemplary damages or aggravated damages; and

(b) interest up to the day of judgment.

(6) A third-party notice need not specifically claim costs unless the claim is for a debt or liquidated demand.

Note ***Liquidated demand*** is defined in the dictionary.

(7) If the relief sought requires the court's decision or direction on any question, the third-party notice must state the question.

304 Third-party notice—additional matters for claims for debt and liquidated demands

(1) This rule applies to a third-party notice that includes a claim for a debt or liquidated demand.

Note ***Liquidated demand*** is defined in the dictionary.

(2) A claim for interest up to the day of judgment—

(a) must state the period or periods for which interest is claimed; and

(b) may state the rate or rates at which interest is claimed.

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(3) If a rate is not claimed under subrule (2) (b), the rate is taken to be the rate of interest applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

(4) The costs amount applying under schedule 3, part 3.1 (Claim for debt or liquidated demand) must be specifically claimed for costs.

305 Third-party notice—statement of claim for certain personal injury claims

The following rules apply, with any necessary changes, to a statement of claim for a third-party notice in the same way as they apply to a statement of claim for an originating claim:

(a) rule 52 (Originating claim—statement of claim for motor vehicle death and personal injury claims);

(b) rule 53 (Originating claim—statement of claim for employment death and personal injury claims).

306 Third-party notice—filing

(1) Unless the court gives leave, a third-party notice—

(a) must not be filed by a defendant until the defendant has filed a defence; and

(b) must be filed not later than 28 days after the end of whichever of the following periods ends last:

(i) the time limited for filing the defence of the defendant who is filing the third-party notice (the ***prescribed period***);

(ii) if the plaintiff agrees to an extension of the prescribed period—the agreed period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or directions under this rule.

Note 2 Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

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(2) The defendant must serve a stamped copy of an application for leave under subrule (1) to file a third-party notice on—

(a) the plaintiff; and

(b) each other active party who has filed a notice of intention to respond or defence.

Note ***Active party*** is defined in the dictionary.

(3) If the court gives leave under subrule (1) to the defendant to file a third-party notice, it may give directions about filing and serving the notice.

307 Third-party notice—sealing

The registrar must seal the original and filed copies of a third-party notice.

Note The registrar may reject an originating process that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc).

308 Third-party notice—service

(1) A defendant to a proceeding who files a third-party notice must serve a sealed copy of the notice and attached statement of claim on the third party as if—

(a) the notice were an originating claim in a proceeding; and

(b) the defendant were a plaintiff and the third party were a defendant in the proceeding.

Note Rule 54 (Originating claim—filing and service) deals with service of an originating claim.

(2) The defendant must serve the following documents with the third-party notice:

(a) a sealed copy of any order giving leave to file the notice;

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(b) a sealed copy of any directions about filing and serving the notice;

(c) a copy of a sealed copy of any other relevant order made in relation to the proceeding;

(d) a copy of a sealed copy of the originating claim and attached statement of claim;

(e) a copy of a stamped copy of all other pleadings filed in the proceeding;

(f) a copy of a stamped copy of all applications in the proceeding not finally disposed of;

Note ***Application*** in a proceeding is defined in r 6006.

(g) a copy of all affidavits filed in the proceeding, other than affidavits that are not relevant to the issues arising on the third-party notice;

(h) a copy of all other documents that have been served by the plaintiff on the defendant, or by the defendant on the plaintiff, and are intended to be relied on;

(i) a copy of all amendments of any document mentioned in paragraphs (d) to (h) or details of the amendments.

309 Third-party notice—effect of service on third party

On being served with a third-party notice, the third party becomes a party to the proceeding with the same rights in relation to the third party's defence to a claim made against the third party in the notice as the third party would have if sued in the ordinary way by the defendant.

310 Third-party notice—setting aside

Rule 40 (Setting aside originating process etc) applies, with necessary changes, to a proceeding started by a third-party notice as if the proceeding were a proceeding started by an originating process.

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311 Third-party notice—notice of intention to respond and defence

(1) Part 2.3 (Notice of intention to respond and defence) applies, with necessary changes, to a proceeding started by a third-party notice as if—

(a) the proceeding were a proceeding started by an originating process; and

(b) the third-party notice were the originating claim in the proceeding; and

(c) the defendant were a plaintiff and the third party were a defendant in the proceeding.

(2) The third party may, in the defence to the third-party notice, deny a plaintiff's claims against a defendant and claim a matter showing a plaintiff's claim against a defendant is not maintainable.

312 Service of pleadings after filing of third-party notice

A party who files a pleading after the filing of a third-party notice must serve the pleading on all other active parties.

313 Counterclaim by third party

(1) A third party who has a claim against the defendant who included the third party may counterclaim against the defendant.

(2) The third party may include the plaintiff or someone else as a defendant to the counterclaim if the person could be included as a defendant if the third party brought a separate proceeding.

(3) Rule 462 (Counterclaim—against additional party) applies, with necessary changes, to a counterclaim by a third party.

314 Third-party notice—default by third party

(1) This rule applies if—

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(a) a default judgment is entered for the plaintiff against the defendant who included a third party; and

(b) the third party is in default in relation to the third-party notice.

Note Div 2.11.3 (Default by defendant) applies to a third-party notice (see r 1116 (Application—div 2.11.3) and r 1117 (When is a defendant *in default*—generally).

(2) The third party—

(a) is taken to admit a claim stated in the third-party notice or its statement of claim; and

(b) is bound by the default judgment between the plaintiff and defendant as far as it is relevant to a claim or issue stated in the third-party notice or statement of claim.

(3) The defendant—

(a) at any time after satisfaction of the default judgment, or, with the court's leave, before satisfaction, may obtain a judgment against the third party for a contribution or indemnity claimed in the notice; and

(b) with the court's leave, may obtain a judgment against the third party for other relief or remedy claimed in the notice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order (including an order setting aside, amending or a judgment) under this rule.

(4) The court may amend or set aside the judgment against the third party.

315 Third parties—disclosure

(1) A third party to a proceeding may serve on the defendant who included the third party a notice requiring the defendant to disclose discoverable documents for the proceeding only if the third party files a notice of intention to respond or defence.

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(2) A third party to a proceeding may serve on a plaintiff a notice requiring the plaintiff to disclose discoverable documents for the proceeding only if the third party denies the plaintiff's allegations against the defendant or alleges another matter showing the plaintiff's claim against the defendant is not maintainable.

(3) However, disclosure may be ordered by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for a disclosure order.

316 Third-party notice—hearing

(1) A third party may appear at, and take part in, the hearing of the proceeding as the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction or order under this rule.

(2) At the hearing, the issues between the defendant who included the third party and the third party must be heard with the issues between the plaintiff and the defendant.

(3) However, the court may, at any time, order that the issues between the defendant who included the third party and the third party be heard separately from the issues between the plaintiff and the defendant if it considers that hearing them together would—

(a) unfairly prejudice a party; or

(b) embarrass or delay the hearing of the proceeding; or

(c) be otherwise inconvenient.

(4) The court may order the separate hearing—

(a) on application by a party before the party files and serves a third-party notice; or

(b) on its own initiative.

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(5) The court may give the orders it considers appropriate about the conduct of the separate hearing.

317 Third party—extent bound by judgment between plaintiff and defendant

In a proceeding, the court may make an order about the extent to which a third party is bound by a judgment between a plaintiff and a defendant.

318 Third-party notice—judgment between defendant and third party

(1) In a proceeding, the court may enter judgment in favour of—

(a) a defendant who included a third party against the third party; or

(b) the third party against the defendant.

(2) If—

(a) judgment is entered in favour of the plaintiff against a defendant; and

(b) judgment is entered in favour of the defendant against a third party;

the defendant must not enforce the judgment against the third party unless the judgment against the defendant is satisfied, or the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

319 Notice claiming contribution or indemnity against another party

(1) A party to a proceeding, other than a plaintiff, may file a notice claiming a contribution or indemnity (a ***notice claiming contribution or indemnity***) if the party wants to—

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(a) claim against another party to the proceeding a contribution or indemnity; or

(b) claim against another party to the proceeding relief—

(i) relating to or connected with the original subject matter of the proceeding; and

(ii) substantially the same as some relief claimed by the plaintiff; or

(c) require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the plaintiff and defendant but also between either of them and another party to the proceeding.

(2) A notice claiming contribution or indemnity must state briefly and specifically the nature of the claim made and relief sought.

Note See approved form 2.13 (Notice claiming contribution or indemnity) AF2009-283.

(3) A notice claiming contribution or indemnity filed in the Magistrates Court must show that the court has jurisdiction to decide the claim.

Note The *Magistrates Court Act 1930*, pt 4.2 (Civil jurisdiction) deals with the civil jurisdiction of the Magistrates Court under that Act.

(4) A notice claiming contribution or indemnity must state specifically any claim for interest up to the day of judgment.

(5) A notice claiming contribution or indemnity need not specifically claim costs.

(6) Rule 316 (Third-party notice—hearing), rule 317 (Third party—extent bound by judgment between plaintiff and defendant) and rule 318 (Third-party notice—judgment between defendant and third party) apply, with necessary changes, to a notice claiming contribution or indemnity as if—

(a) the notice were a third-party notice; and

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(b) the party who filed the notice were the defendant; and

(c) the party against whom the claim in the notice is made were a third party.

320 Notice claiming contribution or indemnity—filing and service etc

(1) Unless the court gives leave, a notice claiming contribution or indemnity—

(a) must not be filed by a party until the party has filed a defence; and

(b) must be filed not later than 28 days after the end of whichever of the following periods ends last:

(i) the time limited for filing the defence of the party who is filing the notice claiming contribution or indemnity (the ***prescribed period***);

(ii) if the plaintiff and the defendant, if the defendant is not the party filing the notice, agree to an extension of the prescribed period—the agreed period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or directions under this rule.

Note 2 Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(2) An application for leave under subrule (1) to file a notice claiming contribution or indemnity must be served on—

(a) the party against whom the claim is made; and

(b) each other active party.

(3) If the court gives leave under subrule (1) to the party to file a notice claiming contribution or indemnity, it may give directions about filing and serving the notice.

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(4) A party who files a notice claiming contribution or indemnity must serve stamped copies of the notice on the party against whom the claim is made and each other active party.

(5) A party served with a notice claiming contribution or indemnity need not file a notice of intention to respond or defence to the notice if the party has filed a notice of intention to respond or defence in the proceeding.

321 Contribution under Civil Law (Wrongs) Act, s 21

If the only relief claimed by a party is a contribution under the *Civil Law (Wrongs) Act 2002*, section 21 (Right of contribution) against another party, the party may file and serve a notice claiming contribution or indemnity without further pleading.

322 Third-party notice—fourth and subsequent parties

(1) If a third party has filed a notice of intention to respond or defence, this part applies, with necessary changes, as if the third party were a defendant.

(2) If a person included as a party (the ***fourth party***) by a third party by notice (the ***fourth-party notice***) files a notice of intention to respond or defence—

(a) this part as applied by this rule has effect in relation to the fourth party and any other further person included (as fifth-party and so on successively); and

(b) a reference in these rules to a ***third party*** includes a reference to the fourth party and any other further person included (as fifth-party and so on successively); and

(c) a reference in these rules to a ***third-party notice*** includes a reference to the fourth-party notice and the notice including any other further person (a fifth-party notice and so on successively).

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Part 2.6 Pleadings

Division 2.6.1 Application—pt 2.6

400 Application—pt 2.6

(1) This part applies to—

(a) a proceeding started by originating claim or third-party notice; and

(b) a counterclaim made in a proceeding started by originating claim or third-party notice.

Note 1 A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

Note 2 ***Third-party notice*** includes a fourth-party notice, fifth-party notice etc (see r 322 (2) (c)).

(2) However, despite rule 39 (3) (Proceeding incorrectly started by originating application), this part applies to a proceeding started by an originating application only if the court orders the plaintiff to file and serve a statement of claim.

Division 2.6.2 Rules of pleading

405 Pleadings—formal requirements

(1) Each pleading must be in writing.

(2) If a pleading alleges or otherwise deals with several matters—

(a) the pleading must be divided into paragraphs; and

(b) each matter must, as far as convenient, be put in a separate paragraph; and

(c) the paragraphs must be numbered consecutively.

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(3) If a plaintiff seeks relief in relation to 2 or more distinct claims based on different grounds, they must be stated, as far as possible, separately.

(4) If a defendant relies on 2 or more distinct grounds of defence, set-off or counterclaim based on different facts, they must be stated, as far as possible, separately.

(5) If a pleading is settled by counsel, it must state—

(a) that it was settled by counsel; and

(b) counsel's name.

Note Div 6.3.1 (General provisions about documents for filing) contains provisions about formal requirements for documents (including pleadings) to be filed, see esp r 6103 (1) (Documents—layout etc) and r 6106 ((Documents—signing).

406 Pleadings—statements in

(1) Each pleading must—

(a) be as brief as the nature of the case allows; and

(b) contain a statement in a summary form of the material facts on which the party relies but not the evidence by which the facts are to be proved; and

(c) state specifically any matter that if not stated specifically may take another party by surprise; and

(d) subject to rule 419 (Pleadings—other relief), state specifically any relief the party claims; and

(e) if a claim or defence under a statute is relied on—identify the specific provision of the statute.

(2) A party may raise a point of law in a pleading if the party also pleads the material facts in support of the point.

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407 Pleadings—matters to be specifically pleaded

(1) Without limiting rule 406, the following matters must be specifically pleaded:

(a) an accident the cause of which is unknown and undiscoverable;

(b) breach of contract or trust;

(c) breach of statutory duty;

Note See r 432 (Pleadings—negligence and breach of statutory duty).

(d) damages of every kind claimed, including, for example, special and exemplary damages;

Note See also r 417 (Pleadings—kind of damages etc).

(e) duress;

(f) estoppel;

(g) extinction of right or title;

(h) fraud or illegality;

(i) interest (including the rate of interest and method of calculation) claimed;

(j) malice or ill will;

(k) misrepresentation;

(l) motive, intention or other condition of mind, including knowledge or notice;

(m) negligence or contributory negligence;

Note See r 432 (Pleadings—negligence and breach of statutory duty).

(n) payment;

(o) performance or part performance;

(p) release;

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(q) statute of limitations;

(r) a statute requiring that contracts be in, or evidenced by, writing (for example, statute of frauds);

(s) undue influence;

(t) voluntary assumption of risk;

(u) waiver;

(v) want of capacity, including disorder or disability of mind;

(w) that a testator did not know and approve of the contents of a will;

(x) that a will was not properly made;

(y) wilful default;

(z) anything else required by a practice note to be specifically pleaded.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Also, any fact from which any of the matters mentioned in subrule (1) is claimed to be an inference must be specifically pleaded.

(3) In a defence or pleading after a defence, a party must specifically plead any matter that—

(a) the party alleges makes a claim or defence of the opposite party not maintainable; or

(b) shows a transaction is void or voidable; or

(c) raises an issue of fact not arising out of a previous pleading.

407A Pleadings in human rights proceedings—generally

(1) This rule applies to a proceeding if a party to the proceeding relies on the *Human Rights Act 2004* for relief.

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(2) The party's pleadings must state—

(a) the human right that the party relies on, including—

(i) the relevant content of the right; and

(ii) any particular aspect of the right that the party relies on; and

(b) the facts on which the party relies to assert that the *Human Rights Act 2004* applies to the proceeding; and

(c) the relief sought.

407B Pleadings in human rights proceedings—public authorities

(1) This rule applies to a proceeding to which the *Human Rights Act 2004*, section 40C applies.

Note The *Human Rights Act 2004*, s 40C applies if a person—

(a) claims that a public authority has acted in contravention of that Act, s 40B (Public authorities must act consistently with human rights); and

(b) alleges that the person is or would be a victim of the contravention.

(2) The plaintiff's pleading must state—

(a) the human right the plaintiff alleges was breached in contravention of the *Human Rights Act 2004*, section 40B; and

(b) the details of the alleged breach; and

(c) the relief sought.

408 Pleadings—money claims short form

(1) This rule applies if the plaintiff claims an amount payable by the defendant to the plaintiff for any of the following:

(a) goods sold and delivered by the plaintiff to the defendant;

(b) goods bargained and sold by the plaintiff to the defendant;

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(c) work done or materials provided by the plaintiff for the defendant at the defendant's request;

(d) money lent by the plaintiff to the defendant;

(e) money paid by the plaintiff for the defendant at the defendant's request;

(f) money had and received by the defendant for the plaintiff's use;

(g) interest on money owing by the defendant to the plaintiff;

(h) interest for forbearance by the plaintiff at the defendant's request on money owing by the defendant to the plaintiff;

(i) money found to be owing by the defendant to the plaintiff on accounts stated between them.

(2) The plaintiff may plead the facts using the form of words set out in the relevant paragraph of subrule (1).

(3) The defendant may file a notice requiring the plaintiff to plead the facts on which the plaintiff relies in accordance with the provisions of this part other than this rule (the ***facts in full***).

(4) The defendant must file any notice under subrule (3) within the time limited by these rules for the defendant to file a defence.

Note Rule 102 provides that, in a proceeding started by an originating claim, a defendant must file a defence not later than the later of the following:

(a) 28 days after the day the claim is served on the defendant;

(b) if the defendant makes an unsuccessful application under r 40 to have the claim set aside—7 days after the day the application is refused.

However, if, before the defendant files a defence, an application for summary judgment under r 1146 is served on the defendant, but the court does not on the application dispose of all the claims for relief against the defendant, the court may set a time within which the defendant must file a defence.

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(5) If the defendant files a notice under subrule (3), the defendant must serve a stamped copy of the notice on the plaintiff at the plaintiff's address for service on the day it is filed.

Note ***Address for service*** is defined in the dictionary.

(6) If the defendant files a notice under subrule (3)—

(a) the plaintiff must, not later than 28 days after the day the notice is served on the plaintiff—

(i) file an amended statement of claim pleading the facts in full; and

(ii) include in the amended statement of claim a note to the effect that the statement has been amended in response to the notice; and

(b) if the defendant has not already filed a defence—the time for filing the defence is extended until 14 days after the day a stamped copy of the plaintiff's amended statement of claim is served on the defendant.

(7) The plaintiff is not prevented from amending the statement of claim under rule 505 (Amendment—of pleadings before close of pleadings) only because the plaintiff has amended the statement of claim under this rule.

409 Pleadings—certain facts need not be pleaded

(1) A party need not plead a fact if—

(a) the law presumes the fact in the party's favour; or

(b) the burden of proving the fact does not lie with the party.

(2) This rule does not apply if it is necessary to plead the fact—

(a) to comply with rule 406 (Pleadings—statements in); or

(b) to meet a specific denial of the fact pleaded by another party.

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410 Pleadings—technical objections

A technical objection must not be raised to any pleading on the ground of want of form.

411 Pleadings—references to spoken words and documents

(1) This rule applies if spoken words or a document is referred to in a pleading.

(2) The effect of the spoken words or document must be stated as far as material.

(3) The precise terms of the spoken words or document need not be stated, except as far as the terms are themselves material.

412 Pleadings—conditions precedent

(1) An allegation of the performance or happening of a condition precedent necessary for a party's case is implied in the party's pleadings.

(2) A party who denies the performance or happening of a condition precedent must specifically plead the denial.

Examples of conditions precedent

1 a thing has been done

2 an event has happened

3 a state of affairs exists, or has existed at some time or times

4 the party is ready and willing, or was at all relevant times ready and willing, to perform an obligation

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

413 Pleadings—matters arising after start of proceeding

(1) A party to a proceeding may plead a matter that arose after the proceeding started.

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(2) A party to a proceeding may plead facts giving rise to a cause of action that arose after the proceeding started only—

(a) if it is not unjust to any other party; and

(b) with the court's leave.

Note 1 See r 502 (3) (Amendment—of documents) about including a cause of action arising after a proceeding is started.

Note 2 See also r 104 (Ground of defence arising after defence filed etc), r 467 (Counterclaim—defence arising after answer) and r 481 (3) (Pleadings—after reply).

Note 3 Pt 6.2 (Applications in proceedings) applies to an application for leave.

414 Pleadings—inconsistent allegations etc

(1) A party may make inconsistent allegations or claims in a pleading only if they are pleaded as alternatives.

(2) However, a party must not make an allegation or new claim that is inconsistent with an allegation or claim made in another pleading of the party without amending the pleading.

Note Pt 2.7 (Amendment) deals with amendment of pleadings.

415 Pleadings—notice pleaded as a fact

(1) This rule applies if—

(a) notice to someone of something is to be stated in a pleading; and

(b) the form or the precise terms of the notice, or the circumstances from which the notice is to be inferred, are not material.

(2) The pleading may state the notice as a fact.

416 Pleadings—implied contracts or relations

(1) This rule applies if a contract or any relation between people is to be implied from letters or conversations or from a number of circumstances.

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(2) The pleading may state the contract or relation as a fact.

(3) The pleading may refer to the letters, conversations or circumstances as briefly as possible without setting out all or part of them.

417 Pleadings—kind of damages etc

(1) If damages are claimed in a pleading, the pleading must state—

(a) each kind of damages claimed; and

(b) for any damages that are not general damages—the amount of the damages claimed that is known to the party.

(2) Without limiting rule 407 (1) (d) (Pleadings—matters to be specifically pleaded), a party claiming general damages must include the following particulars in the party's pleading:

(a) the nature of the loss or damage suffered;

(b) the exact circumstances in which the loss or damage was suffered.

(3) If practicable, the party must also plead each kind of general damages and state the nature of the damages claimed for each kind.

418 Pleadings—amount of unliquidated damages

(1) A pleading must not claim an amount for unliquidated damages.

(2) However, a pleading in a proceeding in the Magistrates Court may claim an amount for unliquidated damages if—

(a) the claim is for the recovery of 1 or more of the following if it is or they were a consequence of damage alleged to have happened because of the defendant's negligence:

(i) the cost of repairing a motor vehicle;

(ii) a motor vehicle's value, less any salvage value;

(iii) the cost of towing a motor vehicle; or

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(b) the claim is for the recovery of 1 or both of the following if it is or they were a consequence of damage alleged to have happened because of the defendant's negligence in driving, riding or controlling a motor vehicle:

(i) the cost of repairing property;

(ii) property's value, less any salvage value.

(3) In this rule:

property does not include a motor vehicle.

419 Pleadings—other relief

The court may grant relief other than that stated in the pleadings whether or not other relief is expressly claimed in the pleadings.

Division 2.6.3 Pleadings—general

425 Pleadings—striking out

(1) The court may, at any stage of a proceeding, order that a pleading or part of a pleading be struck out if the pleading—

(a) discloses no reasonable cause of action or defence appropriate to the nature of the pleading; or

(b) may tend to prejudice, embarrass or delay the fair trial of the proceeding; or

(c) is frivolous, scandalous, unnecessary or vexatious; or

(d) is otherwise an abuse of the process of the court.

Note 1 The registrar may also reject a document that is filed if it does not comply with these rules (see r 6140 (Rejecting documents—noncompliance with rules etc) or if it is an abuse of the court's process or is frivolous or vexatious (see r 6142 (Rejecting documents—abuse of process etc)).

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Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 3 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

(2) The court may receive evidence on the hearing of an application for an order under this rule.

(3) If the court makes an order under this rule, it may also make any other order it considers appropriate, including, for example—

(a) if the court makes an order under subrule (1) (a)—an order staying or dismissing the proceeding or entering judgment; and

(b) an order about the future conduct of the proceeding.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

426 Pleadings—trial without

(1) This rule applies if, in a proceeding, the court considers that—

(a) the issues between the parties can be defined without pleadings or further pleadings; or

(b) for any other reason the proceeding may properly be tried without pleadings or further pleadings.

(2) The court may order that the proceeding be tried without pleadings or further pleadings.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If the court makes an order under subrule (2), it may order the parties to prepare a statement of facts and issues involved in the proceeding or, if the parties do not agree on a statement, may settle a statement itself.

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Division 2.6.4 Particulars

430 Pleadings—all necessary particulars must be included

(1) A party must include in a pleading particulars necessary to—

(a) define the issues for, and prevent surprise at, the trial; and

(b) enable the opposite party to identify the case that the pleading requires the opposite party to meet; and

(c) support a matter specifically pleaded under rule 407 (Pleadings—matters to be specifically pleaded).

(2) This rule does not require a party to include in a pleading particulars of any claim for interest up to judgment other than those required by rule 51 (2) (Originating claim—additional matters for claims for debt and liquidated demands) or rule 304 (2) (Third-party notice—additional matters for claims for debt and liquidated demands).

431 Pleadings—use of 'Scott schedule'

(1) This rule applies to a proceeding involving a building, technical or other matter in which a number of items of a claim are in dispute in relation to liability, amount or both.

(2) The party making the claim—

(a) may prepare and file a 'Scott schedule'; and

(b) if the court orders—must prepare and file a 'Scott schedule'.

Note 1 See approved form 2.14 (Scott schedule) AF2006-259.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) A party on whom a Scott schedule is served must complete and file the schedule.

Note A 'Scott schedule' is a document that contains a summary of the parties' claims and defences. The summary is set out in columns so that it is easy

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to see the issues on which the parties agree and those on which they do not agree.

432 Pleadings—negligence and breach of statutory duty

(1) If a party pleads negligence (whether contributory or otherwise) or breach of statutory duty, the particulars must state the facts and circumstances of the negligent act or omission or breach of statutory duty.

(2) Also, if the party alleges 2 or more negligent acts or omissions or breaches of statutory duty, the particulars must, as far as practicable, state separately the facts and circumstances of each negligent act or omission or breach of statutory duty.

433 Pleadings—how particulars must be given

(1) The particulars to be given by a pleading must be stated in the pleading or, if that is inconvenient, in a separate document mentioned in, and filed and served with, the pleading.

(2) Further particulars may be given by correspondence.

(3) A party giving further particulars must file a copy of the particulars.

434 Pleadings—application for better particulars

(1) A party may apply to the court for an order for better particulars of the opposite party's pleading.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) The court may make any order under this rule it considers appropriate, including, for example, an order about the future conduct of the proceeding.

Note 1 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Unless the court otherwise orders, the making of an application under this rule does not extend the time for pleading.

(4) Particulars required under an order under this rule must repeat the relevant part of the order so the particulars are self-explanatory.

435 Pleadings—failure to comply with better particulars order

If a party does not comply with an order made under rule 434 (Pleadings—application for better particulars), the court may make the order, including give the judgment, it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.6.5 Answering pleadings

Note to div 2.6.5
For rules about when a defence must be filed etc, see r 102 (Notice of intention to respond and defence—filing and service). For an answer to a counterclaim, see r 466 (Counterclaim—answer to).

440 Pleadings—answering

(1) In response to a pleading, a party may plead a denial, non-admission or admission.

(2) A plea of non-admission operates as a denial.

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441 Pleadings—denials and non-admissions

(1) It is not enough for a party to deny generally the grounds alleged in a pleading.

(2) Instead, a party must deal specifically with each allegation of fact.

(3) However, a pleading in response to a pleading that alleges damage or damages is taken not to admit the allegation unless it specifically admits the allegation.

(4) A party in a pleading must not deny an allegation of fact in the previous pleading of an opposite party in an evasive way.

(5) Instead, a party must answer the point of substance.

Example

A plaintiff alleges that a defendant received an amount of money. It is not enough for the defendant to deny that the defendant received that amount. Instead, the defendant must deny that the defendant received that amount or any part of it, or set out how much the defendant received.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(6) If an allegation is made with various circumstances, it is not enough to deny it along with the circumstances.

442 Pleadings—defence to debt and liquidated demand claims

(1) In a defence to a claim for debt or a liquidated demand, it is not enough for the defendant simply to deny the debt.

(2) Instead, the defendant must deny the matters of fact from which the defendant's liability is alleged to arise that are disputed.

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443 Pleadings—defence to motor vehicle and employment personal injuries claims

(1) This rule applies to a defence to an originating claim if rule 52 (Originating claim—statement of claim for motor vehicle death and personal injury claims) or rule 53 (Originating claim—statement of claim for employment death and personal injury claims) applies to the statement of claim for the originating claim.

(2) The defendant must, in the defence, specifically admit or deny every material allegation of fact in the originating claim and statement of claim, including any allegation by way of particulars.

(3) The allegation is taken to be admitted if the defendant does not comply with subrule (2) in relation to it.

(4) A statement in the defence that the defendant does not know and therefore cannot admit a fact alleged in the originating claim or statement is taken to be a denial.

(5) If the defendant wishes to prove a version of facts different from that alleged in the originating claim or statement of claim, the defendant must plead that version in the defence.

(6) The defendant must plead every ground of defence to be relied on, together with the facts necessary to establish each ground.

444 Pleadings—defence to proceeding on bill of exchange etc

(1) This rule applies to a proceeding on a bill of exchange, cheque or promissory note.

(2) The defendant must deny some matter of fact in a defence in denial.

Examples

the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill, cheque or note

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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445 Pleadings—denial of representative capacity or partnership constitution

(1) This rule applies if a party wants to deny—

(a) another party's right to claim as a representative (including a personal representative or trustee) of someone else; or

(b) the alleged constitution of a partnership.

(2) The party must deny it specifically.

446 Pleadings—denial of contract

(1) This rule applies if a contract is alleged by a party in a pleading.

(2) A bare denial of the contract by the opposite party is taken only as a denial in fact of the express contract alleged or of the matters of fact from which the contract may be implied by law, and not as a denial of the legality or sufficiency in law of the contract.

(3) In this rule:

contract includes promise and agreement.

447 Pleadings—allegations admitted unless denied etc

(1) An allegation of fact made by a party in a pleading is taken to be admitted by any opposite party required to plead in response unless, either expressly or by necessary implication—

(a) it is denied in the pleading of the opposite party; or

(b) it is stated to be not admitted in the pleading of the opposite party; or

(c) a joinder of issue under rule 482 (Pleadings—joinder of issue) operates as a denial of the allegation.

Note Rule 441 (3) (Pleadings—denials and non-admissions) provides that a pleading in response to a pleading that alleges damage or damages is taken to deny the allegation unless it specifically admits the allegation.

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(2) However, there is no admission under subrule (1) because of a failure to plead by a party who is, or was at the time of the failure to plead, a person with a legal disability.

448 Pleadings—unreasonable denials and non-admissions

If the court considers that an allegation of fact denied or not admitted should have been admitted, it may order the party who denied or did not admit the allegation to pay the additional costs caused by the denial or non-admission.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

449 Pleadings—confession of defence

(1) If a defendant alleges a defence that arose after the proceeding was started, the plaintiff may file and serve a confession of defence.

Note See approved form 2.15 (Confession of defence) AF2006-260.

(2) On filing and serving a confession of defence, the plaintiff may obtain a judgment for costs to be assessed up to the day the defence was served on the plaintiff, unless the court otherwise orders.

(3) In this rule:

defendant includes a defendant to a counterclaim.

Division 2.6.6 Special defences

455 Pleadings—defence of tender

A defendant cannot plead a defence of tender before the proceeding was started unless the defendant has paid the amount tendered into court or filed a bond or other security approved by the registrar for the payment of the amount.

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456 Pleadings—defence of set-off

(1) A defendant may rely on set-off (whether or not of an ascertained amount) as a defence to all or part of a claim made by the plaintiff, whether or not it is also included as a counterclaim.

(2) If the amount of a set-off is more than the amount of the claim against which it is set off, then, whether or not the set-off is pleaded as a counterclaim—

(a) the set-off may be treated as a counterclaim; and

(b) the court may give judgment for the amount of the difference or give the defendant other relief to which it considers the defendant is entitled.

Examples of other relief

injunction, or stay, if within the court's jurisdiction

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Despite subrules (1) and (2)—

(a) if the court considers that dealing with a set-off in a proceeding would unfairly prejudice a party, embarrass or delay the hearing of the proceeding or be otherwise inconvenient, it may, by order, set aside a defence or counterclaim in the proceeding by way of set-off and may order that the set-off be dealt with in a separate hearing; or

(b) if the court considers a set-off should not be allowed, it may, by order, set aside a defence or counterclaim by way of set-off.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Division 2.6.7 Counterclaims

460 Counterclaim—cause of action arising after start of proceeding

A counterclaim may be made in relation to a cause of action that arose after the proceeding started.

461 Counterclaim—against plaintiff

(1) In a proceeding, a defendant may make a counterclaim against a plaintiff, instead of bringing a separate proceeding.

Note See r 464 (Counterclaim—pleading) and approved form 2.9 (Defence and counterclaim) AF2015-28.

(2) The defendant must state specifically that the defendant is making a counterclaim.

(3) For the Magistrates Court, the amount claimed by the counterclaim must not be more than the maximum amount for which the court has jurisdiction.

Note 1 The *Magistrates Court Act 1930*, pt 4.2 (Civil jurisdiction) deals with the civil jurisdiction of the Magistrates Court under that Act. See also r 463 (Counterclaim—abandonment of excess in Magistrates Court).

Note 2 See r 219 (Counterclaim or set-off when co-plaintiff wrongly included).

462 Counterclaim—against additional party

(1) A defendant to a proceeding may make a counterclaim against a person other than a plaintiff (whether or not the person is already a party to the proceeding) if—

(a) the plaintiff is also made a party to the counterclaim; and

(b) either—

(i) the defendant alleges that the other person is liable with the plaintiff for the subject matter of the counterclaim; or

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(ii) the defendant claims against the other person relief relating to or connected with the original subject matter of the proceeding.

Note See r 464 (Counterclaim—pleading) and approved form 2.9 (Defence and counterclaim) AF2015-28.

(2) If a defendant to a proceeding counterclaims against a person who is not a party to the original proceeding, the defendant must—

(a) make the counterclaim; and

(b) serve the following on the person within the time allowed for service on a plaintiff:

(i) the defence (including the counterclaim);

(ii) a sealed copy of any directions about filing and serving the defence (including the counterclaim);

(iii) a copy of a sealed copy of any other relevant order made in relation to the proceeding;

(iv) a copy of a sealed copy of the originating claim and its statement of claim;

(v) a copy of a stamped copy of all other pleadings filed in the proceeding;

(vi) a copy of a stamped copy of all applications in the proceeding not finally disposed of;

Note ***Application*** in a proceeding is defined in r 6006.

(vii) a copy of all affidavits filed in the proceeding, other than affidavits that are not relevant to the issues arising on the counterclaim;

(viii) a copy of all other documents that have been served by the plaintiff on the defendant, or by the defendant on the plaintiff, and are intended to be relied on;

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(ix) a copy of all amendments of any document mentioned in subparagraphs (iv) to (viii) or details of the amendments.

(3) A person not a party to the original proceeding who is included as a defendant to a counterclaim becomes a party to the proceeding on being served with the defence (including the counterclaim).

(4) If a defendant makes a counterclaim against a person not a party to the original proceeding, the relevant provisions (see subrule (5)) apply, with necessary changes, as if—

(a) the counterclaim were a proceeding started by originating claim; and

(b) the party making the counterclaim were a plaintiff; and

(c) each party against whom the counterclaim is made were a defendant.

(5) In subrule (4):

relevant provisions means the following provisions:

- part 2.2 (Starting civil proceedings)
- part 2.3 (Notice of intention to respond and defence)
- division 2.11.2 (Default by plaintiff)
- division 2.11.3 (Default by defendant)
- division 2.11.4 (Default by defendant—partial defence)
- division 2.11.5 (Summary judgment).

463 Counterclaim—abandonment of excess in Magistrates Court

(1) This rule applies to a defendant in a proceeding in the Magistrates Court if the defendant has a cause of action against a plaintiff for an amount that is more than the maximum amount for which the court has jurisdiction (the ***maximum amount***).

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(2) The defendant may make a counterclaim in relation to the cause of action if the defendant abandons the amount over the maximum amount in the counterclaim.

(3) In the counterclaim proceeding—

(a) the defendant may not recover an amount that is more than the maximum amount; and

(b) final judgment in the proceeding operates in full discharge of all claims in relation to the cause of action.

464 Counterclaim—pleading

A counterclaim must be included in the same document as the defence.

465 Counterclaim—plaintiff may rely on previous pleadings

A plaintiff to a counterclaim may, in the counterclaim, plead all or any of the facts on which the plaintiff relies by referring to the previous pleadings in the proceeding in which the counterclaim is made.

466 Counterclaim—answer to

(1) A defendant to a counterclaim may plead to the counterclaim by filing and serving an answer to the counterclaim.

Note See approved form 2.16 (Answer to counterclaim) AF2015-29.

(2) If a plaintiff in a proceeding is the defendant to a counterclaim and is filing and serving a reply, any answer to the counterclaim must be included in the reply.

(3) Any answer to a counterclaim must be filed and served not later than—

(a) 14 days after the day the counterclaim is served; or

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(b) if the defendant to the counterclaim is not a party to the original proceeding—28 days after the day the counterclaim is served.

467 Counterclaim—defence arising after answer

(1) This rule applies if a ground of defence to a counterclaim arises after—

(a) the defendant to the counterclaim files an answer to the counterclaim; or

(b) the time limited by rule 466 (Counterclaim—answer to) for the defendant to the counterclaim to file an answer to the counterclaim ends.

(2) The defendant to the counterclaim may file a further answer to the counterclaim not later than 7 days after the day the ground of defence arises or at a later time with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) The registrar must seal the original and filed copies of the further answer to the counterclaim.

Note The registrar may reject a further answer to a counterclaim that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc).

(4) The defendant to the counterclaim must serve a sealed copy of the further answer to the counterclaim on the plaintiff to the counterclaim at the plaintiff's address for service on the day it is filed.

Note Rule 449 (Pleadings—confession of defence) applies to a defendant to a counterclaim.

468 Counterclaim—effect of no answer

If no answer to a counterclaim is filed and served, the facts stated in the counterclaim are taken to have been admitted.

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469 Counterclaim—response to answer

(1) A plaintiff to a counterclaim may file a response to an answer to the counterclaim.

Note See approved form 2.17 (Response to answer to counterclaim) AF2006-262.

(2) It is not necessary for a party to file a response only for the purpose of denying the allegations in the answer to the counterclaim (that is, to join issue on the answer).

(3) The response must be filed not later than 14 days after the day the answer to the counterclaim is served on the plaintiff to the counterclaim.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(4) The plaintiff to the counterclaim must serve a sealed copy of the response on the defendant to the counterclaim at the defendant's address for service on the day it is filed.

470 Counterclaim—conduct and pleading

(1) These rules apply, with necessary changes, to the conduct and pleading of a counterclaim as if—

(a) the plaintiff on the counterclaim were the plaintiff in an original proceeding; and

(b) the defendant to the counterclaim were the defendant to the original proceeding; and

(c) the counterclaim were an originating process.

(2) However, if a party against whom a counterclaim is made has filed and served a notice of intention to respond or defence in accordance with part 2.3 (Notice of intention to respond and defence), the party is not required to file and serve a notice of intention to respond in relation to the counterclaim.

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(3) Subject to rule 471 (Counterclaim—order for separate hearing), a counterclaim must be heard at the hearing of the plaintiff's claim.

471 Counterclaim—order for separate hearing

(1) The court may, at any time, order that a counterclaim be heard separately from the hearing for the proceeding in which the counterclaim is made if it considers that hearing them together would—

(a) unfairly prejudice a party; or

(b) embarrass or delay the hearing of the proceeding; or

(c) be otherwise inconvenient.

(2) The court may order that a counterclaim be heard separately—

(a) on application by a party before the party files and serves an answer to the counterclaim; or

(b) on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may make the orders it considers appropriate about the conduct of the separate hearing.

472 Counterclaim—after judgment etc in original proceeding

A counterclaim may proceed after judgment is given in the original proceeding or after the original proceeding is stayed, dismissed or discontinued.

473 Counterclaim—judgment for balance

If a defendant establishes a counterclaim against the plaintiff and there is a balance in favour of 1 of the parties, the court may give judgment for the balance.

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474 Counterclaim—stay of claim

If the defendant does not plead a defence but makes a counterclaim, the court may stay the enforcement of a judgment given against the defendant until the counterclaim is decided.

Note Pt 6.2 (Applications in proceedings) applies to an application for a stay.

Division 2.6.8 Progress of pleading

480 Pleadings—reply to defence

(1) A plaintiff may file a reply to a defence.

Note See approved form 2.18 (Reply to defence) AF2006-263.

(2) It is not necessary for a party to file a reply only for the purpose of denying the allegations in the defence (that is, to join issue on the defence).

(3) The reply must be filed not later than 14 days after the day the defence is served on the plaintiff.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(4) The plaintiff must serve a sealed copy of the reply on the defendant at the defendant's address for service on the day it is filed.

Note 1 Rule 469 deals with the response to an answer to a counterclaim.

Note 2 ***Address for service*** is defined in the dictionary.

481 Pleadings—after reply

(1) A party to a proceeding must not file a pleading after a reply (the ***further pleading***) without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) A party may apply for leave to file the further pleading not later than 14 days after the day the party is served with the pleading to which the further pleading responds.

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(3) However, if a ground of defence to a set-off arises after a plaintiff files a reply, or the time limited by rule 480 (Pleadings—reply to defence) for a plaintiff to file a reply ends, the plaintiff may file a further reply not later than 7 days after the day the ground of defence arises or at a later time with the court's leave.

(4) The registrar must seal the original and filed copies of the further reply.

Note The registrar may reject a further defence that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc).

(5) The plaintiff must serve a sealed copy of the further reply on each active party at the party's address for service on the day it is filed.

Note ***Address for service*** is defined in the dictionary.

482 Pleadings—joinder of issue

(1) A pleading may expressly join issue on a previous pleading.

Example

an express denial

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) An express joinder of issue on a pleading operates as a denial of every allegation of fact made in the pleading other than an allegation that is expressly admitted.

(3) If there is no reply by a plaintiff to a defence, there is an implied joinder of issue on the defence.

(4) If there is no answer by the opposite party to a reply or subsequent pleading, there is an implied joinder of issue on the reply or subsequent pleading.

(5) An implied joinder of issue on a pleading operates as a denial of every allegation of fact made in the pleading.

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483 Pleadings—close

(1) The pleadings in a proceeding close—

(a) if a pleading is served after the defence, or answer to a counterclaim—on service of the pleading; or

(b) in any other case—7 days after the day the defence, or answer to a counterclaim, is served.

(2) If a third-party notice, or subsequent notice, is served in a proceeding, the pleadings in the proceeding on that notice close—

(a) if a pleading is served after the defence, or answer to a counterclaim, to the notice—on service of the pleading; or

(b) in any other case—7 days after the day the defence, or answer to a counterclaim, to the notice is served.

Division 2.6.9 Admissions

490 Admissions—voluntary admission

(1) A party to a proceeding may, in a pleading or notice served on another party, admit, in favour of the other party, the facts stated in the pleading or notice.

(2) An admission made under subrule (1) has effect only for the proceeding.

491 Admissions—notice to admit facts or documents

(1) A party to a proceeding (the ***first party***) may, by notice served on another party, ask the other party to admit, for the proceeding only, the facts or documents stated in the notice.

Note See

- approved form 2.19 (Notice to admit facts) AF2006-264
- approved form 2.20 (Notice to admit authenticity of documents) AF2006-265.

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(2) The other party is taken to admit, for the proceeding only, each of the facts, or the authenticity of each of the documents, stated in the notice if, at the end of 14 days after the day the notice is served on the party, the party has not served a notice on the first party disputing the fact or authenticity of the document.

Note See

- approved form 2.21 (Notice disputing facts) AF2006-266
- approved form 2.22 (Notice disputing authenticity of documents) AF2006-267.

(3) If the other party serves a notice under subrule (2) disputing a fact or authenticity of a document and afterwards the fact or authenticity of the document is proved in the proceeding, the party must pay the costs of the proof, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

492 Admissions—withdrawal

(1) A party may withdraw an admission made under rule 490 (Admissions—voluntary admission) or taken to have been made under rule 491 (2) (Admissions—notice to admit facts or documents) only with the court's leave.

(2) The court may order the withdrawal of the admission.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

493 Admissions—orders on

(1) If an admission is made by a party, whether in a pleading or otherwise, after the start of the proceeding, the court may, on another

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party's application, make an order to which the party applying is entitled on the admission.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(2) The court may give judgment or make another order even though other issues in the proceeding have not been decided.

(3) If an application under this rule is made by a plaintiff, the court may, instead of assessing damages, enter judgment for the plaintiff against the defendant for damages to be assessed.

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Part 2.7 Amendment

500 Application—pt 2.7

This part applies in relation to documents (other than affidavits) that have been filed in a proceeding.

Note See r 6107 (Documents—alterations) about alterations to documents before filing.

501 Amendment—when must be made

All necessary amendments of a document must be made for the purpose of—

(a) deciding the real issues in the proceeding; or

(b) correcting any defect or error in the proceeding; or

(c) avoiding multiple proceedings.

502 Amendment—of documents

(1) At any stage of a proceeding, the court may give leave for a party to amend, or direct a party to amend, an originating process, anything written on an originating process, a pleading, an application or any other document filed in the court in a proceeding in the way it considers appropriate.

(2) The court may give leave, or give a direction, on application by the party or on its own initiative.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or a direction under this rule.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

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(3) The court may give leave to make an amendment even if the effect of the amendment would be to include a cause of action arising after the proceeding was started.

(4) If there is a mistake in the name or identity of a party, the court must give leave for, or direct the making of, amendments necessary to correct the mistake, even if the effect of the amendments is to substitute another person as a party.

(5) This rule does not apply in relation to an amendment of an order.

Note See r 6906 (Mistakes in orders or court certificates) for amendment of orders.

(6) This rule is subject to rule 503 (Amendment—after limitation period).

503 Amendment—after limitation period

(1) This rule applies in relation to an application for leave in a proceeding to make an amendment mentioned in this rule if a relevant period of limitation, current at the date the proceeding was started, has ended.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(2) The court may give leave to make an amendment correcting a mistake in the name or identity of a party, even if the effect of the amendment is to substitute a new party, only if—

(a) the court considers it appropriate; and

(b) the court is satisfied that the mistake sought to be corrected—

(i) was a genuine mistake; and

(ii) was not misleading or likely to cause any reasonable doubt about the identity of the person intending to sue or intended to be sued.

(3) The court may give leave to make an amendment changing the capacity in which a party sues, whether as plaintiff or counter-claiming defendant, only if—

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(a) the court considers it appropriate; and

(b) the changed capacity in which the party would then sue is a capacity in which the party might have sued on the day the proceeding was started by the party.

(4) The court may give leave to make an amendment to include a new cause of action only if—

(a) the court considers it appropriate; and

(b) the new cause of action arises out of the same facts or substantially the same facts as a cause of action for which relief has already been claimed in the proceeding by the party applying for leave to make the amendment.

504 Amendment—of originating process

(1) An originating process may be amended only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

Note 2 The registrar may make an order amending the originating process if the parties affected by the order consent to it and the registrar considers it appropriate (see r 1611 (Orders—by consent)).

(2) This rule does not apply to a pleading or particular included in an originating process.

505 Amendment—of pleadings before close of pleadings

(1) A party may, without the court's leave, amend the party's pleadings—

(a) once before the close of pleadings; and

(b) as often as necessary before the close of pleadings, with the agreement of all other parties to the proceeding.

(2) This rule does not apply to an amendment for which the court's leave is required.

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506 Amendment—of pleadings disallowed

(1) If a party makes an amendment without the court's leave before the close of pleadings, another party may, not later than 14 days after the day the amendment is served on the party, apply to the court to disallow all or part of the amendment.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) On the application, the court may make any order it considers appropriate.

(3) However, the court must disallow all or part of the amendment if satisfied that, had an application for leave to make the amendment or part been made, it would not have given leave to make the amendment or part.

507 Amendment—of pleadings after close of pleadings

A party may amend the party's pleadings after the close of pleadings only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

Note 2 The registrar may make an order amending a pleading if the parties affected by the order consent to it and the registrar considers it appropriate (see r 1611 (Orders—by consent)).

508 Amendment—when leave to amend ceases to have effect

An order giving a party leave to amend a document ceases to have effect if the party has not amended the document in accordance with the order—

(a) at the end of the time stated in the order for making the amendment; or

(b) if no time is stated in the order—at the end of 14 days after the day the order was made.

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509 Amendment—procedure

(1) An amendment of a document made under this part must be distinguished so that the changes are identifiable.

(2) A party amending a document must file—

(a) a copy of the document that contains the amendments written on it; and

(b) a notice stating the following:

(i) the date of the amendment;

(ii) either—

(A) if the amendment was made with the court's leave—a statement to that effect and the date leave was given; or

(B) if the amendment was made without the court's leave—the number of the rule under which it was made.

(3) The notice must be on or attached to the copy of the document mentioned in subrule (2) (a).

Note The copy of the document and notice must be served on each other active party (see r 511).

(4) However, if an amendment on a copy of the document is inconvenient or makes the document difficult to read, the party making the amendment must file—

(a) a revised document incorporating and distinguishing the amendments; and

(b) a notice stating the matters mentioned in subrule (2) (b) (i) and (ii).

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(5) The notice must be on or attached to the revised document mentioned in subrule (4) (a).

Note The copy of the document and notice must be served on each other active party (see r 511).

(6) Subject to rule 241 (Included or substituted defendant—filing and service of amended originating process), if an originating process is amended and the amendment is made on a copy of the originating process, the registrar must stamp the court's seal on the revised originating process near the amendment.

(7) If a revised originating process is filed under subrule (4), the registrar must seal the revised originating process.

(8) The court may direct how an amendment of a document is to be made.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction under this subrule.

510 Amendment—person required to make

If the court orders an amendment be made to a document, it may order a party, the registrar or other appropriate person to make the amendment.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

511 Amendment—service of amended or revised document etc

If a document has been served and is later amended, the party making the amendment must serve on each other active party—

(a) if the amendment is made on the document under rule 509 (2)—a copy of the document as amended and the notice mentioned in rule 509 (2) (b); or

(b) if a revised document is filed under rule 509 (4)—a copy of the revised document and the notice mentioned in rule 509 (4) (b).

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Note ***Active party*** is defined in the dictionary.

512 Amendment—pleading to

(1) If a party amends a pleading, an opposite party may plead to the amended pleading or amend the opposite party's own pleading.

(2) The pleading or amendment must be served not later than the later of the following:

(a) the end of the time the opposite party then has to plead;

(b) 14 days after the day the amendment is served on the opposite party.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(3) If an opposite party has pleaded before being served with the amendment and does not plead again within the time allowed under subrule (2), the opposite party is taken to rely on the original pleading as an answer to the amended pleading.

513 Amendment—costs

(1) This rule applies to the following costs:

(a) costs of an amendment under this part;

(b) costs thrown away because of the amendment.

(2) Unless the court otherwise orders, the costs are payable by the party making the amendment.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

514 Amendment—taking effect

(1) If a document is amended under this part, the amendment takes effect on and from the date of the document.

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(2) However, an amendment including or substituting a cause of action arising after the proceeding started takes effect on the day the order giving leave was made.

(3) Despite subrule (2), if an amendment mentioned in that rule is made, then, for a limitation period, the proceeding as amended is taken to have started when the original proceeding started.

(4) This rule applies unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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Part 2.8 Disclosure

Division 2.8.1 Interpretation—pt 2.8

600 Definitions—pt 2.8

In this part:

discoverable document means a document that is discoverable under rule 605 (Discoverable documents).

document—see the Evidence Act, dictionary, part 1 and part 2, section 8.

Note ***Document*** is defined in the Legislation Act, dict, pt 1 as any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

The Evidence Act, dict, pt 2, s 8 extends the meaning of document as follows:

'A reference in this Act to a document includes a reference to the following:

(a) any part of the document;

(b) any copy, reproduction or duplicate of the document or of any part of the document;

(c) any part of the copy, reproduction or duplicate.'.

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government means—

(a) the Commonwealth, a State or Territory; or

(b) a Minister, department or agency of the Commonwealth, a State or Territory; or

(c) the government of a foreign country.

list of documents means a list of documents under rule 608 (List of discoverable and privileged documents etc).

privileged from production—see rule 601.

respondent, in relation to a notice for non-party production, means the person to whom the notice is directed.

601 Meaning of *privileged from production*—pt 2.8

For this part, a document is ***privileged from production*** only if—

(a) it is a document of which evidence could not be adduced, or could not be adduced over the objection of a person, because of the Evidence Act, part 3.10 (Privileges), other than section 128 or section 130; or

Note Section 128 deals with privilege against self-incrimination and s 130 deals with exclusion of evidence of matters of state.

(b) the party who would otherwise give discovery is an individual and the contents of the document may tend to prove that the party—

(i) has committed an offence against or arising under an Australian law, or a law of a foreign country, within the meaning of the Evidence Act; or

(ii) is liable to a civil penalty within the meaning of the Evidence Act; or

(c) it is a document of which evidence could not be adduced, or could not be adduced over the objection of a person, because of

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the Evidence Act, section 130, unless the court decides that the document has stopped being privileged from production.

Note 1 The Evidence Act, dict, pt 2, s 9 deals with the meaning of references to laws, and dict, pt 1 defines ***Australian law***.

Note 2 The Evidence Act, dict, pt 2, s 3 provides that a person is taken to be liable to a ***civil penalty*** if, in an Australian or overseas proceeding (other than a criminal proceeding), the person would be liable to a penalty arising under an Australian law or a law of a foreign country.

Division 2.8.2 Disclosure of documents

605 Discoverable documents

(1) A document that is, or has at any time been, in the possession of a party to a proceeding is discoverable by the party if it—

(a) relates, directly or indirectly, to a matter in issue in the proceeding; or

(b) is mentioned, expressly or by necessary implication, in a pleading or notice filed in the proceeding.

(2) However, a document is not discoverable by a party if it—

(a) is filed in court in the proceeding; or

(b) relates only to 1 or more items of special damage, unless another party to the proceeding asks for the document to be discovered; or

(c) is mentioned in a pleading or notice filed in the proceeding by another party, unless it is discoverable on another ground; or

(d) is a written communication in relation to the proceeding between a solicitor for the party requiring disclosure and a solicitor for the disclosing party; or

(e) is the party's brief to the party's counsel; or

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(f) is an advice to the party from the party's counsel.

(3) Also, a document is not discoverable by a party to a proceeding if the document is—

(a) a written confidential communication in relation to the proceeding, created after the commencement of the proceeding, between—

(i) the party and a legal practitioner for the party; or

(ii) 2 or more legal practitioners for the party; or

(b) a note of an oral confidential communication in relation to the proceeding, created after the commencement of the proceeding (made in person or by telephone) between—

(i) the party and a legal practitioner for the party; or

(ii) 2 or more legal practitioners for the party.

(4) This rule applies unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(5) For this rule, a matter is ***in issue*** until it is—

(a) admitted or taken to be admitted; or

(b) withdrawn, struck out or otherwise disposed of.

(6) In this rule:

confidential communication—see the Evidence Act, section 117.

confidential document—see the Evidence Act, section 117.

606 Orders about disclosure

(1) The court may make the following orders:

(a) an order that limits a party's duty of disclosure;

(b) an order for a party to disclose discoverable documents;

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(c) if the court considers that a party has not, or may not have, adequately disclosed discoverable documents—an order for a party to make further disclosure;

(d) an order for the lists of documents of the parties, or the list of documents of a party, to be served in a stated electronic form;

(e) an order for disclosure of discoverable documents by the parties, or a party, to be made in stages or in a stated way;

(f) an order for disclosure, or nondisclosure, by a party of any discoverable document in the party's possession;

(g) any other order about disclosure, or nondisclosure, of documents that the court considers appropriate.

Example for par (e) and par (g)

The court may make an order permitting disclosure by bundle.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The court may make an order under subrule (1) on the application of a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) Before making an order under subrule (1), the court must have regard to the following matters:

(a) the principle that disclosure of documents in a proceeding should be limited to disclosure that is reasonably necessary for fairly disposing of the proceeding, or part of the proceeding, or for saving costs;

(b) the likely relevance and significance, in relation to the proceeding, of the documents, or particular documents, that may be discovered;

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(c) the likely time, cost and inconvenience of disclosing documents or particular documents.

(4) Subrule (3) does not limit the matters to which the court may have regard.

(5) The court may inspect any document in a party's possession to decide whether it ought to be disclosed by the party.

(6) An affidavit must not be used for an application for an order under this rule unless the court otherwise orders.

607 Notice to disclose discoverable documents

(1) A party to a proceeding may serve on another party a notice requiring the other party to disclose discoverable documents for the proceeding.

Note For disclosure in relation to third parties, see r 315 (Third parties—disclosure).

(2) Unless the court gives leave, the party must not serve a notice—

(a) before the close of pleadings; or

(b) after the matter is listed for hearing.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) The party who is served with the notice must—

(a) file the following documents not later than 28 days after the day the party receives the notice:

(i) the party's list of documents;

(ii) an affidavit verifying the list;

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(iii) if the party is represented by a solicitor—the solicitor's certificate of advice in relation to the list; and

Note 1 Rule 608 (List of discoverable and privileged documents etc) sets out requirements for the list, affidavit and certificate.

Note 2 Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(b) serve a copy of each of the documents on each other active party.

608 List of discoverable and privileged documents etc

(1) A party's list of documents must—

(a) set out, in a convenient order—

(i) each document discoverable by the party; and

(ii) each document discoverable by the party that the party claims to be privileged from production; and

(b) describe clearly and briefly—

(i) each document set out in the list; and

(ii) if the party claims the document is privileged from production—the nature of the claim for privilege; and

(c) for each document not in the party's possession, state—

(i) when and how it stopped being in the party's possession; and

(ii) to the best of the party's knowledge, information and belief, who now has possession of the document or, failing that, what has become of the document.

Note See approved form 2.23 (List of documents) AF2006-268.

(2) For subrule (1), if any documents come within a group of documents of the same kind, the list of documents must deal with the documents as a group.

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(3) The affidavit verifying the party's list of documents must state that the person making the affidavit—

(a) has made reasonable inquiries about the party's discoverable documents; and

(b) believes that there are no discoverable documents, other than those mentioned in the list of documents in accordance with subrule (1) (a) (i), that are, or have been, in the party's possession; and

(c) believes that the documents mentioned in the list of documents (other than the documents mentioned in subrule (1) (c)) are in the party's possession; and

(d) believes that the documents mentioned in subrule (1) (c) are in the possession of the people (if any) respectively stated in the list of documents in accordance with subrule (1) (c) (ii); and

(e) for any document mentioned in subrule (1) (c) for which no person is stated—has no belief about who has possession of the document.

Note See approved form 2.24 (Affidavit verifying list of documents) AF2006-269.

(4) The certificate of advice by the party's solicitor in relation to the party's list of documents must state that the solicitor—

(a) has advised the party of the party's obligations in relation to—

(i) a notice requiring the party to disclose discoverable documents for the proceeding; or

(ii) an order for the party to disclose discoverable documents; and

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(b) is not aware of any discoverable documents, other than those mentioned in the list of documents in accordance with subrule (1) (a) (i), that are, or have been, in the party's possession.

Note See approved form 2.25 (Solicitor's certificate of advice in relation to list of documents) AF2006-270.

609 Claim for privilege—challenge etc

(1) This rule applies if—

(a) a party claims in the party's list of documents that a document is privileged from production; and

(b) another party challenges the claim by letter given to the party making the claim.

(2) The party making the claim must file and serve on the other party an affidavit stating the claim not later than 7 days after the day the party making the claim receives the letter from the other party challenging the claim.

(3) The affidavit must be made by an individual who knows the facts giving rise to the claim.

(4) On application by the party making the claim or a party challenging the claim, the court may decide a dispute about whether a document is privileged.

Note 1 For privilege, see the Evidence Act, pt 3.10.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule in relation to a dispute.

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610 Claim for privilege—waiver

A claim for privilege from production for a document mentioned in a list of documents served by a party is taken to be waived by the party if—

(a) the list of documents does not comply with rule 608 (1) (a) (ii) and (1) (b) (List of discoverable and privileged documents etc) in relation to the document; or

(b) the party does not comply with rule 609 (2) (Claim for privilege—challenge etc) in relation to the document.

611 Continuing disclosure

(1) This rule applies to a discoverable document if, after disclosing documents under this part—

(a) a party to a proceeding becomes aware that the document was wrongly omitted from the party's list of documents; or

(b) the document comes into the party's possession.

(2) However, this rule does not apply to a note of oral communications (whether made in person or by telephone) in relation to the proceeding between a solicitor for a party and a solicitor for another party to the proceeding.

(3) The party must disclose the document to each party to whom the party has been required to give discovery—

(a) not later than 7 days after the day the party—

(i) becomes aware of the omission; or

(ii) receives possession of the document; or

(b) if the hearing of the proceeding is to start within the 7-day period, or has started—immediately.

(4) However, this rule does not require the party to disclose a document if, apart from this rule, the party is not required to disclose it.

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Division 2.8.3 Production and inspection

620 Production of documents for inspection

(1) This rule applies if a party to a proceeding (the ***inspecting party***) gives notice to another party (the ***producing party***) to produce for inspection a document mentioned in—

(a) the producing party's list of documents; or

(b) any originating process, pleading, particular or affidavit filed by the producing party in the proceeding.

(2) The producing party must, in accordance with this rule, produce the document for inspection by the inspecting party.

(3) However, the producing party does not have to produce—

(a) a document not required to be disclosed under this part; or

(b) a document for which the producing party has, in the party's list of documents, claimed privilege from production; or

(c) a document not required by the inspecting party to be produced; or

(d) a document not in the producing party's possession; or

(e) a document relating only to a claim in the proceeding that does not affect the producing party.

(4) Production of documents by the producing party must take place on the day, and at the time and place, stated by the producing party in a notice given to the inspecting party, unless the producing party and the inspecting party agree on alternative arrangements.

(5) The notice must—

(a) be given by the producing party to the inspecting party not later than 7 days after the day the producing party is given the notice under subrule (1); and

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(b) state—

(i) a day that is a business day and is not earlier than 7 days, nor later than 21 days, after the day the notice under subsection (4) is given to the inspecting party; and

(ii) a time between 9 am and 3 pm; and

(c) state as the place for production—

(i) the address for service of the producing party; or

(ii) if it is not practicable to produce the documents at that address—some other reasonable place in the ACT.

Note ***Address for service*** is defined in the dictionary.

(6) The inspecting party may copy a document produced for inspection and make notes of, or take extracts from, it.

(7) If the producing party makes a copy of a document for, and at the request of, the inspecting party, the producing party is entitled to payment for the copy under schedule 4 (Scale of costs).

(8) If the producing party discloses a document to the inspecting party after inspection by the inspecting party, the producing party must allow the inspecting party to inspect the document as soon as practicable, either at the place where the inspection took place or another place agreed by the parties.

(9) However, subrule (8) does not require the producing party to produce a document if, apart from the subrule, the party is not required to produce it.

621 Orders about production of documents for inspection

(1) This rule applies to the production of documents by a party to a proceeding for inspection by another party to the proceeding.

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(2) The court may do any of the following:

(a) make an order for production of documents by 1 or more parties to be made in stages or in a stated way;

(b) inspect a document to decide whether it ought to be produced;

(c) make an order about whether a document has to be produced by a party (either generally, at a particular time or to a particular party);

(d) make an order for a document stored on a computer to be produced in a stated way or form;

(e) make any other order about production of documents that it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) Before making an order under subrule (2), the court must have regard to the following matters:

(a) the principle that production of documents in a proceeding should be limited to production that is reasonable and necessary for fairly disposing of the proceeding, or part of the proceeding, or for saving costs;

(b) the likely relevance and significance, in relation to the proceeding, of the documents, or particular documents, that may be produced;

(c) the likely time, cost and inconvenience of producing documents or particular documents.

(4) Subrule (3) does not limit the matters to which the court may have regard.

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622 Effect of inspection of documents disclosed by another party

(1) A party who inspects a document (the ***inspecting party***) that was disclosed by another party (the ***producing party***) is taken to admit—

(a) if the document is described in the list of documents as an original document—that the document is an original document and was printed, written or signed as it purports to have been; and

(b) if the document is described in the list of documents as a copy—that the document is a true copy; and

(c) if the document is described in the list of documents as a copy of a document that was served—that the original was served as described.

(2) However, subrule (1) does not apply if—

(a) the document is not admissible in evidence; or

(b) the inspecting party has in the party's pleadings denied its authenticity or that the original was served as described; or

(c) the inspecting party serves on the producing party, not later than 14 days after the day the inspecting party inspected the document, a notice stating that the inspecting party disputes its authenticity or that the original was served as described; or

(d) the court orders that it does not apply.

623 Production of documents at hearing of proceeding

A document disclosed under this part must be produced at the hearing of the proceeding if—

(a) notice to produce it has been given with reasonable particularity to a party by another party to the proceeding; and

(b) its production is asked for by the other party at the hearing.

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Division 2.8.4 Interrogatories

630 Service of interrogatories

(1) A party to a proceeding has the right to serve interrogatories on another party to the proceeding.

(2) The interrogatories may be set out in a letter.

(3) However, the court may order that interrogatories not be served in the proceeding, or not be served by or on a particular party to the proceeding, except to the extent (if any) stated in the order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or leave under this rule.

(4) Also, unless the court gives leave, a party must not serve interrogatories in the proceeding on another party—

(a) before the close of pleadings; or

(b) if the party has previously served interrogatories on the other party; or

(c) after the matter is listed for hearing.

(5) A set of interrogatories that is to be answered by 2 or more people must contain a note stating which of the interrogatories each of them is required to answer.

(6) A party who is served with interrogatories must, not later than 28 days after the day the party receives the interrogatories—

(a) file an affidavit setting out and verifying (except to the extent that the party objects under rule 631 to answering) the party's answers to the interrogatories; and

(b) serve a stamped copy of the affidavit on the party serving the interrogatories.

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631 Objections to answer interrogatories

(1) An objection by a party to answer an interrogatory must be on 1 or more of the following grounds:

(a) the interrogatory is unnecessary;

(b) the interrogatory is oppressive, scandalous, vexatious or otherwise improper;

(c) the interrogatory is unnecessarily long, wordy or uncertain;

(d) the interrogatory is irrelevant, is of a 'fishing' nature or inquires into a matter of evidence;

(e) the party is privileged under the Evidence Act, part 3.10 (Privileges) from answering the interrogatory;

(f) the answer would disclose (completely or partly) the contents of a document privileged from production by the party;

(g) it is contrary to the public interest to disclose a matter that the answer would disclose;

(h) a ground arising under a provision of a territory law or a law of the Commonwealth, if the ground, the law and the provision are stated in the objection.

(2) An objection to answer on the ground that the interrogatory is unnecessary operates as an objection that the interrogatory is not reasonable and necessary for fairly disposing of the proceeding, or part of the proceeding, or for saving costs.

632 Orders about interrogatories

(1) The court may—

(a) set aside interrogatories, or any interrogatory, on a ground mentioned in rule 631 (1); or

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(b) on a ground mentioned in rule 631 (1), set aside, order to be removed from the court file, or order to be removed from the court file and destroyed, any answers to interrogatories that have been filed; or

(c) order a party to answer, or to give a further answer to, an interrogatory that the party has—

(i) failed to answer (sufficiently or at all); or

(ii) made an objection to answering that the court disallows; or

(d) make any other order about the service or answering of interrogatories (including an order about costs) that it considers appropriate.

(2) The court may make an order under this rule on the application of a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) Before making an order under subrule (1), the court must have regard to the following matters:

(a) the principle that interrogatories in a proceeding should be limited to interrogatories that are reasonable and necessary for fairly disposing of the proceeding, or part of the proceeding, or for saving costs;

(b) the likely relevance and significance, in relation to the proceeding, of interrogatories, or particular interrogatories, and the answers;

(c) the likely time, cost and inconvenience of answering interrogatories or particular interrogatories.

(4) Subrule (3) does not limit the matters to which the court may have regard.

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(5) An order under subrule (1) (c) may include, for a party who has failed to answer an interrogatory (sufficiently or at all), an order for the oral examination of—

(a) if the party is an entity mentioned in rule 640 (1) (Answers by governments, corporations etc)—a person, or the holder of a position, stated by the court; or

(b) in any other case—the party.

(6) The questions asked, and answers given, on an examination under subrule (5)—

(a) must be taken down in writing and certified by an officer of the court; and

(b) as certified, are taken for this division to be interrogatories and answers to interrogatories.

(7) An affidavit must not be used for an application for an order under this rule unless the court otherwise orders.

633 Answers to interrogatories

(1) A party who is served with interrogatories must answer an interrogatory that the party is required to answer under this division—

(a) from the party's own knowledge of the fact or matter raised by the interrogatory; or

(b) if the party does not have the knowledge—from any belief the party has about the fact or matter.

(2) This rule and rule 634 apply, with necessary changes, to a party that is a government, corporation or unincorporated body as if—

(a) a reference to the party were a reference to the person who answers the interrogatories on behalf of the government, corporation or body; and

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(b) a reference to an employee or agent of the party were a reference to an employee or agent of the government, corporation or body.

Note Rule 640 (Answers by governments, corporations etc) sets out who may swear an affidavit verifying answers to interrogatories.

634 Answers to interrogatories—belief

(1) This rule applies if a party mentioned in rule 633 does not have knowledge of the fact or matter raised by an interrogatory and must answer the interrogatory from any belief the party has about the fact or matter.

(2) The party is taken not to have a belief about the fact or matter if the party—

(a) does not have information relating to the fact or matter on which to form a belief; or

(b) has the information, but the party has reasonable grounds for not believing that the information is true.

(3) The party must answer from any belief the party has about the fact or matter irrespective of the source of the information on which the belief is formed.

(4) However, the party is not required to answer from the party's belief about the fact or matter if the belief is formed on information that was given to the party in a communication or document that is privileged under the Evidence Act, part 3.10 (Privileges).

(5) To help the party form a belief about the fact or matter, the party must make all reasonable inquiries to find out—

(a) whether a person who is or has been the party's employee or agent has knowledge of the fact or matter that was acquired by the person as the party's employee or agent; and

(b) if a person has the knowledge—what the knowledge is.

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(6) To remove any doubt, the party must make the inquiries mentioned in subrule (5) even if at the time the party is required to answer the interrogatory a person having the relevant knowledge has stopped being the party's employee or agent.

635 Answers to interrogatories to be verified

A party's answers to interrogatories must be verified by an affidavit.

Note See approved form 2.26 (Affidavit verifying answers to interrogatories) AF2006-271.

636 Tendering of answers to interrogatories in evidence

(1) A party to a proceeding who has served interrogatories on another party may tender the answers, or some of the answers, in evidence against the other party on the hearing of the proceeding.

(2) However, the court must not allow an answer to be tendered in evidence without another answer if it considers that, in the interests of justice, the other answer should also be tendered in evidence.

(3) For subrule (2), the court may inspect all of the answers to the interrogatories.

(4) Subrule (1) does not make an answer admissible in evidence if, apart from the subrule, it is not admissible in evidence.

Division 2.8.5 Who may verify list of documents or answers to interrogatories?

640 Answers by governments, corporations etc

(1) This rule applies if any of the following is a party who has to verify a list of documents, or answer interrogatories:

(a) a government;

(b) a corporation;

(c) the holder of a position (including, for example, the sheriff);

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(d) an unincorporated body;

(e) a person represented by a litigation guardian.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The affidavit verifying the party's list of documents, or answers to the interrogatories, must be sworn as follows:

(a) for a government—by a Minister, or an authorised officer, employee or agent, of the government;

(b) for a corporation—by a director, the secretary, or an authorised officer or employee, of the corporation;

(c) for the holder of a position—by the holder of the position or an authorised officer, employee or agent of the position holder;

(d) for an unincorporated body—by the members, or 1 or more authorised members, or an authorised employee or agent, of the body;

(e) for a person represented by a litigation guardian—by the litigation guardian.

(3) However, the court may make an order for a party's list of documents or answers to interrogatories to be verified by the affidavit of a person not mentioned in subrule (2).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

641 Party cannot swear affidavit personally

If the court is satisfied that a party cannot, for adequate reason, swear an affidavit verifying the party's list of documents or answers to

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interrogatories, it may authorise a suitable person to swear the affidavit.

Note Pt 6.2 (Applications in proceedings) applies to an application for an authorisation under this rule.

Division 2.8.6 Preliminary discovery

650 Discovery to identify potential defendant

(1) This rule applies if—

(a) a person (the ***applicant***) has, or is likely to have, a cause of action against someone (the ***potential defendant***); and

(b) either—

(i) the applicant wants to start a proceeding in the court against the potential defendant for the cause of action; or

(ii) the following provisions apply:

(A) the applicant is a party to a proceeding in the court;

(B) the potential defendant is not a party to the proceeding;

(C) the applicant wants to make a claim for relief in the proceeding against the potential defendant for the cause of action;

(D) the claim for relief could properly have been made in the proceeding against the potential defendant if the potential defendant were a party; and

(c) the applicant, after making reasonable inquiries, cannot ascertain the identity or whereabouts of the potential defendant sufficiently to start the proceeding, or make the claim for relief, against the potential defendant; and

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(d) someone else (the ***other person***) may have information, or may have or have had possession of a document or thing, that tends to assist in ascertaining the identity or whereabouts of the potential defendant.

Note The road transport authority cannot be required to comply with a preliminary discovery order in certain circumstances (see *Road Transport (General) Act 1999*, s 236).

(2) If subrule (1) (b) (i) applies, the applicant may apply to the court by originating application for an order under this rule (and, if relevant, an order under rule 715 (Inspection, detention, custody and preservation of property—orders etc)) against the other person.

(3) If subrule (1) (b) (ii) applies, the applicant may apply to the court for an order under this rule (and, if relevant, an order under rule 715) against the other person.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(4) The application must be supported by an affidavit stating the facts on which the applicant relies, and stating the kinds of information, documents or things in relation to which the application is made.

Note 1 For an application mentioned in r (2), div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 For an application mentioned in r (3), r 6008 (Application in proceeding—filing and service) deals with service of the application and supporting affidavit.

(5) The court may order the other person—

(a) to attend before the court to be examined in relation to the identity or whereabouts of the potential defendant; or

(b) to produce to the court any document or thing that is, or has been, in the other person's possession relating to the identity or whereabouts of the potential defendant; or

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(c) to make and serve on the applicant a list of the documents or things that are, or have been, in the other person's possession relating to the identity or whereabouts of the potential defendant; or

(d) to produce for inspection by the applicant any document or thing that is, or has been, in the other person's possession relating to the identity or whereabouts of the potential defendant.

(6) If the court makes an order under subrule (5) (a) (an ***order for attendance***), the court may—

(a) order that the other person must produce to the court on the examination any document or thing that is in the other person's possession relating to the identity or whereabouts of the potential defendant; and

(b) direct that the examination by the court be held before the registrar.

(7) An order under this rule in relation to any information, document or thing held by a corporation may be addressed to any appropriate officer or former officer of the corporation.

(8) Rule 6606 (1) (Compliance with subpoena) and rule 6611 (Costs and expenses of compliance with subpoena) apply, with necessary changes, in relation to an order for attendance under this rule as if the order were a subpoena.

(9) In this rule:

identity or whereabouts, of the potential defendant, includes—

(a) whether the potential defendant is an individual or a corporation; and

(b) for an individual—the potential defendant's name, home address or other whereabouts, occupation and sex; and

(c) for a corporation—the potential defendant's registered office, business address or other whereabouts.

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651 Discovery to identify right to claim relief

(1) This rule applies if—

(a) a person (the ***applicant***) has, or may have, a cause of action against someone (the ***potential defendant***); and

(b) either—

(i) the applicant, after making reasonable inquiries, cannot obtain sufficient information to decide whether to start a proceeding in the court against the potential defendant for the cause of action; or

(ii) the following provisions apply:

(A) the applicant is a party to a proceeding in the court;

(B) the potential defendant is not a party to the proceeding;

(C) the applicant, after making reasonable inquiries, cannot obtain sufficient information to decide whether to make a claim for relief in the proceeding against the potential defendant for the cause of action;

(D) the claim for relief could properly have been made in the proceeding against the potential defendant if the potential defendant were a party; and

(c) the applicant has reasonable grounds for believing that the potential defendant has or has had possession of a document or thing that can assist in deciding whether to start the proceeding, or make the claim for relief, against the potential defendant; and

(d) inspection of the document or thing by the applicant would help in making the decision.

(2) If subrule (1) (b) (i) applies, the applicant may apply to the court by originating application for an order under this rule (and, if relevant, an order under rule 715 (Inspection, detention, custody and

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preservation of property—orders etc)) against the potential defendant.

(3) If subrule (1) (b) (ii) applies, the applicant may apply to the court for an order under this rule (and, if relevant, an order under rule 715) against the potential defendant.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(4) The application must be supported by an affidavit stating the facts on which the applicant relies, and stating the kinds of documents or things in relation to which the application is made.

Note 1 For an application mentioned in r (2), div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 For an application mentioned in r (3), r 6008 (Application in proceeding—filing and service) deals with service of the application and supporting affidavit.

(5) The court may order the potential defendant to produce the document or thing to the applicant.

(6) An order under this rule in relation to any document or thing held by a corporation may be addressed to any appropriate officer or former officer of the corporation.

652 Order under div 2.8.6—privilege

An order under this division does not require the person against whom the order is made to produce any document that, on the ground of privilege, the person could not be required to produce if the applicant for the order—

(a) had started a proceeding against the person; or

(b) had made the person a party to the proceeding.

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653 Order under div 2.8.6—costs

(1) On application for an order under this division, the court may make an order in relation to the costs of the applicant, the person against whom the order is sought or made and any other party to the proceeding.

(2) The costs for which an order may be made include—

(a) payment of conduct money; and

(b) payments made for any expense or loss in relation to the proceeding; and

(c) the costs of producing any documents for inspection under this division.

Division 2.8.7 Non-party production

659 Application—div 2.8.7

(1) This division does not apply to a document held by a court.

(2) In this rule:

court includes the ACAT.

660 Notice for non-party production—issue

(1) At the request of a party to a proceeding, the registrar must, unless the court otherwise orders, issue a notice (a ***notice for non-party production***) requiring a person who is not a party to the proceeding to produce for inspection a document—

(a) relating to a matter in issue in the proceeding; and

(b) in the person's possession; and

(c) that the person could be required to produce at the trial of the proceeding.

Note 1 See approved form 2.27 (Notice for non-party production) AF2011-51.

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Note 2 See div 6.3.3 (Rejecting filed documents) for the registrar's powers to reject documents.

(2) The applicant may not require production of a document if there is available to the applicant another reasonably simple and inexpensive way of proving the matter sought to be proved by the document.

(3) For this rule, a matter is ***in issue*** until it is—

(a) admitted or taken to be admitted; or

(b) withdrawn, struck out or otherwise disposed of.

661 Notice for non-party production—service

(1) A notice for non-party production must be served personally.

(2) A notice for non-party production is taken to be served personally on a medical expert if, at a place where the expert's practice is carried on—

(a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or

(b) if a person mentioned in paragraph (a) does not accept the notice—the notice is put down in the person's presence and the person is told in general terms what it is.

(3) A copy of the notice must be served on each other active party to the proceeding before the notice is served on the respondent.

662 Notice for non-party production—inspection by other parties

(1) The respondent to a notice for non-party production issued in a proceeding must produce any document stated in the notice by delivering the document to the party to the proceeding stated in the notice (the ***receiving party***) within—

(a) 14 days after the notice is served on the respondent; or

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(b) if a longer time is stated in the notice—the longer time.

(2) The receiving party must within 14 days after the document is delivered to the receiving party—

(a) if there is another active party to the proceeding other than the applicant for the notice—deliver the document to the other party; or

(b) in any other case—deliver the document to the applicant for the notice.

(3) If a document is delivered to another active party under subrule (2) (a), the other party must within 14 days after the document is delivered to the party—

(a) if there is another active party to the proceeding, other than the applicant for the notice, that the document has not been delivered to—deliver the document to the other party; or

(b) in any other case—deliver the document to the applicant for the notice.

(4) For the purpose of deciding whether to make a claim mentioned in rule 664 (1) (a) (which deals with claims for privilege), any party to the proceeding on whom a copy of the notice for non-party production is served is entitled to inspect a document stated in the notice other than a document in relation to which any other party makes such a claim.

663 Notice for non-party production—application to set aside

(1) The respondent to a notice for non-party production in a proceeding or any other party to the proceeding may, not later than 14 days after the day the notice is served on the respondent, apply to the court to have the notice amended or set aside.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) On an application under this rule, the court may make the orders it considers appropriate.

664 Notice for non-party production—privilege or objection

(1) This rule applies if—

(a) the respondent to a notice for non-party production in a proceeding or any other party to the proceeding—

(i) claims that a document mentioned in the notice is privileged from production; or

(ii) otherwise objects to its production; or

(b) someone else who would be affected by the notice and who has not been served with the notice is given leave to object to the production of a document mentioned in the notice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(2) The person objecting must give notice of the objection to the applicant for the notice and, if required by the applicant, file an affidavit, and serve a stamped copy on the applicant, stating—

(a) the document that the person objects to being produced; and

(b) the reasons the person claims privilege or otherwise objects to the document being produced.

(3) The reasons for objection may include, but are not limited to, the following:

(a) if the person objecting is the respondent—the expense and inconvenience likely to be incurred by the respondent in complying with the notice;

(b) the lack of relevance to the proceeding of the document;

(c) the lack of particularity with which the document is described;

(d) the confidential nature of the document or its contents;

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(e) the effect disclosure would have on anyone;

(f) if the person objecting was not served with the notice—the fact that the person should have been served.

(4) The person objecting need not produce the document and the applicant for the notice, the respondent or another party to the proceeding may apply to the court for orders in relation to the claim or objection.

(5) On application under this rule, the court may make the orders it considers appropriate.

665 Notice for non-party production—failure to produce documents

(1) This rule applies if the respondent to a notice for non-party production fails to produce a document stated in the notice in accordance with the notice.

(2) The applicant for the notice may apply to the court for orders in relation to the failure.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) On application under this rule, the court may make the orders it considers appropriate.

666 Notice for non-party production—copying produced documents

(1) The applicant for a notice for non-party production, or the applicant's solicitor, may copy at the applicant's expense any document produced under the notice unless the respondent to the notice objects.

(2) If the respondent objects the applicant may apply to the court for orders in relation to the objection.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) On an application under this rule, the court may make the orders it considers appropriate.

667 Notice for non-party production—costs

(1) The applicant for a notice for non-party production must pay any expenses reasonably incurred by the respondent to the notice in complying with the notice.

(2) If the respondent has not been paid by the applicant for the notice an amount that the respondent considers adequate to cover the expenses reasonably incurred, or expected to be reasonably incurred, in complying with the notice, the respondent may apply to the court to decide the amount that the applicant is to pay the respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(3) Before making an application to the court under subrule (2), the respondent must give the applicant for the notice not less than 7 days notice of the intention to make the application.

(4) A decision of the court on an application under subrule (2) is taken to be a judgment of the court for the amount decided against the applicant for the notice and may be enforced accordingly.

(5) Subrule (1) does not affect the discretion of the court to order that the costs of and incidental to an application for a notice for non-party production (including any amount paid to the respondent under that subrule) are to be paid by any other party to the proceeding.

Division 2.8.8 Discovery—other provisions

670 Contravention of pt 2.8 order—contempt of court

(1) If a person, without reasonable excuse, contravenes an order of the court made under this part, the person may be dealt with for contempt of court.

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(2) This rule does not limit any other power of the court in relation to the contravention.

Note 1 Failure to answer a question or give information in a legal proceeding may be an offence (see Criminal Code, s 722).

Note 2 See also r 671 (Contravention of pt 2.8 order—other action), r 2444 (Enforcement—failure of individual to comply with subpoena etc), r 2445 (Enforcement—failure of corporation to comply with subpoena etc).

671 Contravention of pt 2.8 order—other action

(1) If a party, without reasonable excuse, contravenes an order of the court made under this part, the court may—

(a) if the party is a plaintiff or other claimant—order that all, or a stated part, of the party's proceeding be struck out, dismissed or stayed; or

(b) if the party is a defendant or respondent—order that the party not be allowed to defend all, or a stated part, of the proceeding against the party.

(2) This rule does not limit any other power of the court in relation to the contravention.

672 Solicitor to notify party of certain matters about pt 2.8

(1) This rule applies if a solicitor who acts for a party to a proceeding receives in relation to the proceeding—

(a) a notice under rule 607 (1) (Notice to disclose discoverable documents) or 620 (1) (Production of documents for inspection); or

(b) interrogatories under rule 630 (1) (Service of interrogatories); or

(c) an order of the court made under this part that imposes an obligation (however expressed) on the party.

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(2) The solicitor must, without unnecessary delay, take all reasonable steps to tell the party fully about the party's obligation in relation to the notice, interrogatories or order.

(3) If the solicitor, without reasonable excuse, contravenes subrule (2), the solicitor may be dealt with for contempt of court.

(4) Subrule (3) does not limit any other power of the court in relation to the failure.

673 Improper use of disclosed document

(1) This rule applies to someone if the person—

(a) receives a document produced to the person under this part or division 2.12.3 (Expert reports) in relation to a proceeding; or

(b) receives a document, directly or indirectly, from someone else and the document has, to the person's knowledge, been produced under this part or division 2.12.3 to the other person.

(2) The person must not, without leave of the court or other lawful authority, make use of the document otherwise than for the proper purposes of the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) If the person, without reasonable excuse, contravenes subrule (2), the person may be dealt with for contempt of court.

(4) The fact that a document has been filed, received in evidence or read out in court does not affect the application of this rule to the document, but the court may take that fact into account in deciding what action (if any) to take about a contravention of subrule (2) in relation to the document.

(5) Subrule (3) does not limit any other power of the court in relation to the contravention.

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674 Failure to disclose document

(1) This rule applies if a party fails, without reasonable excuse, to disclose to another party a document that the party is required to disclose under this part, including under an order of the court made under this part.

(2) The party must not tender the document in evidence against the other party on the hearing of the proceeding, or tender evidence of its contents, without the leave of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) In deciding whether to give leave under subrule (2), the court must act in accordance with the Evidence Act, part 3.11 (Discretionary and mandatory exclusions).

(4) The party must also pay any costs incurred by another party because of the failure.

(5) This rule does not limit any other power of the court in relation to the failure.

675 Discovery by electronic means—practice notes

(1) A practice note may make provision in relation to the discovery of documents by electronic means.

Note ***Practice note*** is defined in the dictionary to mean a practice note under r 6907.

(2) A practice note must be complied with despite anything in these rules.

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Part 2.9 Preservation of rights and property

Division 2.9.1 Interpretation—pt 2.9

700 Meaning of *usual undertaking as to damages*—pt 2.9

In this part:

usual undertaking as to damages, in relation to an interlocutory order or an interlocutory undertaking given to the court, means an undertaking to submit to any order the court considers just for paying compensation, to be assessed by the court or as directed by the court, to someone (whether or not a party to the proceeding) who is adversely affected by—

(a) the operation of the interlocutory order or undertaking; or

(b) any continuation of the order or undertaking (whether or not varied).

Division 2.9.2 Interim preservation, distribution and payment

705 Application—div 2.9.2

(1) This division applies only in relation to the Supreme Court.

(2) To remove any doubt, division 2.4.9 (People with a legal disability) applies in relation to this division as if an application under this division were a proceeding.

706 Urgent orders before start of proceeding

(1) This rule applies—

(a) in urgent circumstances; and

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(b) if the person applying for an order mentioned in subrule (2) intends to start a proceeding.

(2) Before the proceeding starts, the court may do any of the following as if the proceeding had started:

(a) make an order that the court might make in a proceeding on an application for a habeas corpus order;

(b) make a division 2.9.4 order;

Note For the giving of the usual undertaking as to damages, see r 732 (Division 2.9.4 order—damages and undertaking as to damages).

(c) make an order extending the operation of a caveat, including, for example, under the *Land Titles Act 1925*;

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(d) make an order appointing, or directing the appointment of, a receiver;

(e) make an order under rule 715 (Inspection, detention, custody and preservation of property—orders etc) or rule 716 (Disposal of property other than land).

Note The court may impose a condition about giving the usual undertaking as to damages (see r 715 (5) and r 716 (2)).

(3) Subrule (2) does not limit the orders the court may make before a proceeding starts.

(4) An application for an order mentioned in subrule (2) must be made by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

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(5) An application for an order mentioned in subrule (2) should be served, but if the court is satisfied there is adequate reason for doing so, it may make the order without the application being served on anyone.

(6) The person must give an undertaking to the court that the person will file originating process starting the proceeding not later than—

(a) the end of the time ordered by the court; or

(b) if the court does not make an order mentioned in paragraph (a)—2 days after the day the order mentioned in subrule (2) is made.

(7) In this rule:

habeas corpus order—see rule 3500 (Definitions—pt 3.9).

707 Interim distribution

(1) This rule applies—

(a) to a proceeding about property; and

(b) if the court considers that the property is more than enough to answer the claims on the property for which provision ought to be made in the proceeding.

(2) The court may make an order allowing any part of the property to be conveyed, transferred or delivered to anyone having an interest in the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

708 Interim income

(1) This rule applies—

(a) to a proceeding about property; and

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(b) if the court considers that all or part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceeding.

(2) The court may make an order allowing all or part of the income to be paid to everyone or anyone having an interest in the income for the period set by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

709 Payment before finding out everyone interested

(1) This rule applies if 2 or more people are entitled to share in a fund.

(2) The court may make an order allowing immediate payment to any of those people of the person's share without reserving any part of the share to meet the later costs of finding out any other of those people.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.9.3 Inspection, detention, custody and preservation of property

715 Inspection, detention, custody and preservation of property—orders etc

(1) The court may make an order for the inspection, detention, custody or preservation of property if—

(a) the property is the subject of a proceeding or is property about which an issue may arise in a proceeding; or

(b) inspection of the property is necessary for deciding an issue in a proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) Subrule (1) applies whether or not the property is in the ownership, possession, custody or power of a party.

(3) The court may make an order mentioned in subrule (1) at any stage of a proceeding.

(4) Also, if the Supreme Court makes an order under division 2.8.6 (Preliminary discovery) in relation to a proceeding, the court may make an order mentioned in subrule (1) before the proceeding starts as if the proceeding had started.

(5) Without limiting subrule (1), the order may authorise a person to do any of the following:

(a) enter a place or do something else to obtain access to the property;

(b) take samples of the property;

(c) make observations of the property;

(d) make a record of the property, including, for example, take photographs of the property;

(e) conduct an experiment on or with the property;

(f) observe a process;

(g) observe or read images or information contained in the property, including, for example, by playing or screening a tape, film or disk;

(h) photograph or otherwise copy the property or information contained in the property;

(i) in a proceeding about a party's right to a fund—pay the fund into court or otherwise secure the fund.

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(6) Without limiting rule 6901 (Orders may be made on conditions), an order under this rule may be made on any of the following conditions:

(a) conditions about the payment of the costs of a person who is not a party and who must comply with the order;

(b) conditions about giving security for the costs of a person or party who must comply with the order;

(c) conditions about giving the usual undertaking as to damages.

(7) The court must not make an order under this rule unless it is satisfied that sufficient relief is not available under the Evidence Act, section 169 (Failure to comply with requests).

(8) A party applying for an order under this rule must, as far as practicable, serve an application in accordance with part 6.2 (Applications in proceedings) on everyone who would be affected by the order if made.

716 Disposal of property other than land

(1) This rule applies—

(a) to a proceeding about property (other than land) or in which an issue may arise about property (other than land); and

(b) if it appears to the court that—

(i) the property is perishable or is likely to deteriorate or otherwise decrease in value; or

(ii) the property should be sold or otherwise disposed of for another reason.

(2) At any stage of the proceeding, the court may order the sale or other disposal of all or part of the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) Without limiting rule 6901 (Orders may be made on conditions), an order may be made on conditions about giving the usual undertaking as to damages.

717 Order for inspection, detention, custody or preservation affecting non-party

The court may make an order under rule 715 (Inspection, detention, custody and preservation of property—orders etc) or rule 716 (Disposal of property other than land) binding on, or otherwise affecting, someone who is not a party to the proceeding.

718 Application for order for inspection, detention, custody or preservation

(1) An application in a proceeding for an order for the inspection, detention, custody or preservation of property may be made by a party to the proceeding.

Note An application may be made before a proceeding starts (see r 706 (Urgent orders before start of proceeding)).

(2) The applicant must make all reasonable inquiries to find out who has, or claims to have, an interest in the property.

(3) Unless the court otherwise orders, an order must not be made under rule 715 (Inspection, detention, custody and preservation of property—orders etc) or rule 716 (Disposal of property other than land) unless each person who has an interest in the property is served with the application.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

719 Division 2.9.3—other jurisdiction of court not affected

This division does not affect the jurisdiction of the court (whether inherent, implied or statutory) to make orders for the inspection, detention, custody or preservation of property that is exercisable apart from this division (whether or not under these rules).

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Division 2.9.4 Injunctions and similar orders

Note to div 2.9.4

The Magistrates Court may make an order under this division only in relation to a proceeding that the court has jurisdiction to hear and decide. For example, the court may not make an order under this division before a proceeding is started (see *Magistrates Court Act 1930*, s 257 (Personal actions at law—amount or value) and s 258 (Power of court to grant relief)).

Subdivision 2.9.4.1 Injunctions and similar orders—generally

725 Meaning of *division 2.9.4 order*

In these rules:

division 2.9.4 order means an injunction, freezing order or search order.

726 Definitions—div 2.9.4

In this division:

ancillary order—see rule 742.

freezing order—see rule 741.

search order—see rule 751.

727 Division 2.9.4—other jurisdiction of court not affected

This division does not affect the jurisdiction of the court (whether inherent, implied or statutory) to make a division 2.9.4 order or ancillary order that is exercisable apart from this division (whether or not under these rules).

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728 Division 2.9.4 order—procedure

(1) If the division 2.9.4 order is the principal relief claimed, the applicant must apply to the court by originating application and must comply with part 2.2 (Starting civil proceedings), except as far as this division otherwise provides or the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule otherwise ordering if the proceeding has been started.

(2) However, if the division 2.9.4 order is not the principal relief claimed, or the order is sought in a proceeding that has been started or relates to a proceeding that has ended, the applicant must comply with part 6.2 (Applications in proceedings), except as far as this division otherwise provides or the court otherwise orders.

(3) For the Supreme Court, this rule applies whether the application is made—

(a) before a proceeding is started; or

(b) in a pending proceeding; or

(c) after a proceeding has ended (including after judgment).

729 Division 2.9.4 order without notice etc

(1) An application for a division 2.9.4 order or ancillary order should be served, but if the court is satisfied there is adequate reason for doing so, it may make the order without the application being served on anyone.

(2) Without limiting the court's discretion in the exercise of its equitable jurisdiction, on an application for a division 2.9.4 order, the court may, if it considers it appropriate—

(a) make the order for a limited period stated in the order; or

(b) make the order until the trial of the proceeding; or

(c) make an order for a limited time restraining a person from leaving Australia; or

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(d) make another order, including, for example, an ancillary order.

Note 1 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

Note 2 ***Ancillary order*** is defined in r 742.

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Also, an application for an ancillary order may be made separately from the application for a freezing order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an ancillary order made separately from the application for a freezing order.

730 Division 2.9.4 order without trial

(1) A plaintiff claiming relief by way of a division 2.9.4 order, with or without a declaration or other relief, may apply to the court for a judgment.

(2) The plaintiff may make the application at any time after—

(a) the plaintiff is served with a notice of intention to respond or defence; or

(b) the end of the time set by rule 102 (Notice of intention to respond or defence—filing and service) for filing a notice of intention to respond or defence.

(3) On the hearing of an application under subrule (1), the court may do 1 or more of the following:

(a) give judgment in relation to the division 2.9.4 order and declaration (if any) and, if other relief is claimed, give the directions it considers appropriate about how to dispose of the rest of the proceeding;

(b) make a division 2.9.4 order until the hearing or until a stated day;

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(c) order the parties to file and serve pleadings;

(d) direct a trial of the proceeding.

731 Division 2.9.4 order—expedited trial

On an application for a division 2.9.4 order, the court may order an expedited trial under rule 1311 (Expedited trial).

732 Division 2.9.4 order—damages and undertaking as to damages

(1) Unless there is a good reason, a division 2.9.4 order or ancillary order made until the trial or hearing or until a stated day must not be made without the usual undertaking as to damages having been given.

(2) The usual undertaking as to damages for a division 2.9.4 order or ancillary order applies during an extension of the period of the order.

(3) If the usual undertaking as to damages is contravened, the person in whose favour the undertaking is given may apply to the court for an order for assessment of damages.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule

(4) If the court finds damages are sustained because of a division 2.9.4 order or ancillary order, it may, at trial or on application by a party, assess damages or give the directions it considers necessary for the assessment of damages.

733 Division 2.9.4 order—other undertakings and security to perform undertaking

(1) The court may require an undertaking from a person approved by the court other than the person applying for the division 2.9.4 order or ancillary order.

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(2) The court may require a person who gives an undertaking as to damages under rule 732 (Division 2.9.4 order—damages and undertaking as to damages) to make a payment into court or to give other security, including to the registrar's satisfaction, for the performance of the undertaking.

(3) In deciding whether to make a requirement under this rule, the court may have regard to any of the matters to which it could have regard in deciding whether to make an order for security for costs and whether it is otherwise reasonable in all the circumstances of the matter to impose the requirement.

Note See r 1902 (Security for costs—discretionary factors).

Subdivision 2.9.4.2 Freezing orders

Note An application for a freezing order or an ancillary order may be served on a person who is outside of Australia where such service is authorised by or under div 6.8.9 (Service out of Australia). See, in particular, r 6502 (d).

740 Definitions—sdiv 2.9.4.2

In this subdivision:

another court means a court outside Australia or a court in Australia other than the court.

applicant means a person who applies for a freezing order or ancillary order.

respondent means a person against whom a freezing order or ancillary order is sought or made.

741 Freezing orders—general

(1) The Supreme Court may make an order (a ***freezing order***) for the purpose of preventing the frustration or inhibition of the court's process by ensuring that an order or prospective order of the court is not made valueless or diminished in value.

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(2) The Magistrates Court may make an order (also called a ***freezing order***) in a proceeding for the purpose of preventing the frustration or inhibition of the court's process by ensuring that an order or prospective order of the court in relation to the proceeding is not made valueless or diminished in value.

(3) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

(4) For the Supreme Court, a freezing order or ancillary order may be made whether or not the respondent is a party to an existing proceeding.

(5) For the Magistrates Court, a freezing order or ancillary order may be made in a proceeding whether or not the respondent is a party to the proceeding.

(6) The affidavits supporting an application for a freezing order or ancillary order must include the following information:

(a) information about—

(i) the order mentioned in rule 743 (1) (a) (Freezing orders—order against enforcement debtor or prospective enforcement debtor or third party); or

(ii) if no order mentioned in rule 743 (1) (a) has been obtained—the following information about the cause of action mentioned in rule 743 (1) (b) or (c):

(A) the basis of the claim for principal relief;

(B) the amount of the claim;

(C) if the application is made without being served on the respondent—any possible defence or other response to the claim;

(b) the nature and value of the respondent's assets, as far as they are known to the applicant, in and outside Australia;

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(c) why the applicant believes—

(i) the respondent's assets may be removed from Australia; or

(ii) the dealing with the assets should be restrained by order;

(d) why the applicant believes the order mentioned in rule 743 (1) (a) may go unsatisfied if the removal or dealing mentioned in paragraph (c) happens;

(e) the identity of anyone, other than the respondent, who the applicant knows may be affected by the order, and how the person may be affected.

(7) The court may amend or set aside a freezing order or ancillary order.

742 Ancillary orders

(1) The court may make an order (an ***ancillary order***) ancillary to a freezing order or prospective freezing order as the court considers appropriate.

(2) Without limiting subrule (1), an ancillary order may be made for either or both of the following purposes:

(a) finding out information about assets relevant to the freezing order or prospective freezing order;

(b) deciding whether the freezing order should be made.

(3) On an application mentioned in rule 729 (3) (Division 2.9.4 order without notice etc), the court may make an ancillary order if it considers it appropriate.

743 Freezing orders—order against enforcement debtor or prospective enforcement debtor or third party

(1) This rule applies if—

(a) an order has been given in favour of an applicant by—

(i) the court; or

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(ii) for an order to which subrule (2) applies—another court; or

Note ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

(b) for the Supreme Court—an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—

(i) the court; or

(ii) for a cause of action to which subrule (3) applies—another court; or

(c) for the Magistrates Court—an applicant has started a proceeding in the court and the applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—

(i) the court; or

(ii) for a cause of action to which subrule (3) applies—another court.

(2) This subrule applies to an order if there is a sufficient prospect that the order will be registered in or enforced by the court.

(3) This subrule applies to a cause of action if there is a sufficient prospect that—

(a) the other court will make an order in favour of the applicant; and

(b) the order will be registered in or enforced by the court.

(4) The court may make a freezing order or ancillary order (or both) against an enforcement debtor or prospective enforcement debtor if satisfied, having regard to all the circumstances, that there is a danger that an order or prospective order will be completely or partly unsatisfied because any of the following might happen:

(a) the enforcement debtor, prospective enforcement debtor or someone else absconds;

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(b) the assets of the enforcement debtor, prospective enforcement debtor or someone else are—

(i) removed from Australia or from somewhere in or outside Australia; or

(ii) disposed of, dealt with or diminished in value.

(5) The court may make a freezing order or ancillary order (or both) against someone other than an enforcement debtor or prospective enforcement debtor (a ***third party***) if satisfied, having regard to all the circumstances, that—

(a) there is a danger that an order or prospective order will be completely or partly unsatisfied because—

(i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the enforcement debtor or prospective enforcement debtor; or

(ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the enforcement debtor or prospective enforcement debtor; or

(b) a process in the court, is or may ultimately be, available to the applicant as a result of an order or prospective order, and, under the process, the third party may be obliged to disgorge assets or contribute toward satisfying the order or prospective order.

(6) This rule does not affect the court's power to make a freezing order or ancillary order if the court considers it is in the interests of justice to do so.

745 Freezing orders—costs

(1) The court may make any order about costs that it considers appropriate in relation to a freezing order or ancillary order.

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(2) Without limiting subrule (1), an order about costs includes an order about the costs of anyone affected by a freezing order or ancillary order.

Subdivision 2.9.4.3 Search orders

750 Definitions—sdiv 2.9.4.3

In this subdivision:

applicant means a person who applies for a search order.

described includes described generally whether by reference to a class or otherwise.

premises includes a vehicle or vessel of any kind.

respondent means a person against whom a search order is sought or made.

751 Search orders—general

(1) The Supreme Court may make an order (a ***search order***) in any proceeding or in anticipation of any proceeding in the court for the purpose of securing or preserving evidence and requiring the respondent to allow people to enter premises for the purpose of securing the preservation of evidence that is or may be relevant to an issue in the proceeding or anticipated proceeding.

(2) The Magistrates Court may make an order (also called a ***search order***) in any proceeding in the court for the purpose of securing or preserving evidence and requiring the respondent to allow people to enter premises for the purpose of securing the preservation of evidence that is or may be relevant to an issue in the proceeding.

(3) The affidavits supporting an application for a search order must include the following information:

(a) a description of the things, or the categories of things, in relation to which the order is sought;

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(b) the address of the premises in relation to which the order is sought and whether they are private or business premises;

(c) why the order is sought, including why the applicant believes that the things to be searched for will probably be destroyed or otherwise made unavailable for the purpose of evidence before the court unless the order is made;

(d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;

(e) the name, address, firm and commercial litigation experience of an independent solicitor, who agrees to being appointed to serve the order, supervise its enforcement and do the other things the court directs;

(f) if the premises to be searched are or include residential premises—whether or not the applicant believes that the only occupants of the premises are likely to be young children or an unaccompanied female, or both;

(g) if the application is made in the Supreme Court and the applicant claims that the applicant has an existing or prospective cause of action that is justiciable in Australia—

(i) the basis of the claim for principal relief; and

(ii) if the application is made without being served on the respondent—any possible defence or other response to the claim;

(h) if the application is made in the Magistrates Court, the applicant has started a proceeding in the court and the applicant claims that the applicant has a cause of action that is justiciable in Australia—

(i) the basis of the claim for principal relief; and

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(ii) if the application is made without being served on the respondent—any possible defence or other response to the claim.

(4) The court may amend or set aside the search order.

752 Search orders—requirements for making order

(1) The Supreme Court may make a search order if satisfied that—

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that—

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy the material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

(2) The Magistrates Court may make a search order in relation to a proceeding if satisfied that—

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action in the proceeding; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that—

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy the material or cause it to be unavailable for use in evidence in the proceeding.

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753 Search orders—terms of order

(1) A search order may direct everyone who is named or described in the order—

(a) to allow, or arrange to allow, the other people named or described in the order—

(i) to enter premises stated in the order; and

(ii) to take any steps that are in accordance with the terms of the order; and

(b) to provide, or arrange to provide, the other people named or described in the order with any information, thing or service described in the order; and

(c) to allow the other people named or described in the order to take and keep in their custody anything described in the order; and

(d) not to disclose any information about the order, for up to 3 days after the day the order is served, except for obtaining legal advice or legal representation; and

(e) to do or not to do any act as the court considers appropriate.

(2) Without limiting subrule (1) (a) (ii), the steps that may be taken in relation to a thing stated in a search order include—

(a) searching for, inspecting or removing the thing; and

(b) making or obtaining a record of the thing or any information it may contain.

(3) A search order may contain other provisions that the court considers appropriate.

(4) In this rule:

record includes a copy, photograph, film or sample.

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754 Search orders—independent solicitors

(1) If the court makes a search order, the court must appoint 1 or more solicitors (an ***independent solicitor***), each of whom is independent of the applicant's solicitors, to supervise the execution of the order, and to do the other things in relation to the order that the court considers appropriate.

(2) The court may appoint an independent solicitor to supervise execution of the order at any 1 or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do the other things in relation to the order that the court considers appropriate.

755 Search orders—costs

(1) The court may make any order about costs that it considers appropriate in relation to a search order.

(2) Without limiting subrule (1), an order about costs includes an order about the costs of anyone affected by a search order.

Division 2.9.5 Receivers

765 Application—div 2.9.5

(1) This division applies only in relation to the appointment of a receiver, and a receiver appointed, in a proceeding in the Supreme Court.

(2) However, this division does not apply to situations controlled or regulated by the Corporations Act.

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766 Receiver—agreement to act as etc

(1) A person must not be appointed as a receiver unless the person's written agreement to act as receiver is filed in the court.

(2) The court may set aside a receiver's appointment at any time for an appropriate reason and make the orders it considers appropriate about the receivership and the receiver's remuneration.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

767 Receiver—application for order appointing etc

An application for an order appointing, or directing the appointment of, a receiver should be served, but if the court is satisfied there is adequate reason for doing so, it may make the order without the application being served on anyone.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An application may be made before a proceeding starts (see r 706 (Urgent orders before start of proceeding)).

768 Receiver—address for service

(1) Not later than 7 days after the day a receiver is appointed, the receiver must file a notice that states the receiver's address for service.

(2) In this rule:

address for service means—

(a) if the receiver has a home or place of business in the ACT—the receiver's home or business address; or

(b) in any other case—the address of a place in the ACT.

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769 Receiver—security

(1) If the court appoints a receiver, the receiver must file a security, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The receiver's appointment does not start until the receiver files the security.

(3) If the court directs the appointment of a receiver, a person must not be appointed under the direction until the person has filed a security, unless the court otherwise orders.

(4) A security must—

(a) be approved by the court; and

(b) state that the receiver will account for what is received as receiver, and will deal with what is received as the court directs.

Note See approved form 2.28 (Receiver's security) AF2006-273.

(5) The court may, at any time, order the amendment or setting aside of a security filed under this rule.

770 Receiver—remuneration

A receiver is allowed the remuneration (if any) the court decides.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

771 Receiver—accounts

(1) A receiver must submit accounts to the parties at the intervals or on the dates the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) On giving reasonable notice to the receiver, a party is entitled to inspect, either personally or by an agent, the documents and things on which the accounts are based.

(3) If a party objects to the receiver's accounts, the party may serve notice on the receiver—

(a) stating the items objected to; and

(b) requiring the receiver to file a copy of the accounts within a stated period of not less than 14 days after the day the notice is served.

(4) The party must file a copy of the notice served.

(5) If a notice is served on the receiver under subrule (3), the receiver must file a copy of the accounts, verified by affidavit, within the time required by the notice.

Note See approved form 2.29 (Receiver's affidavit and account) AF2006-274.

(6) The court may examine the items objected to.

(7) The court must, by order, declare the result of the examination and may make an order for the costs and expenses of a party or the receiver.

772 Receiver—default

(1) The court may make any orders it considers appropriate if a receiver does not, in accordance with these rules or an order of the court—

(a) file an account or other document that is required to be filed; or

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(b) do something that is required to be done.

Examples of orders

1 discharge the receiver

2 appoint another receiver

3 make an order about costs

4 order the repayment of remuneration already paid to the receiver

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) If a receiver fails to comply with a requirement of these rules or an order of the court to pay into court an amount shown by the receiver's accounts to be owed by the receiver, the court may direct that the receiver pay interest on the amount at the following rate until the amount is paid into court:

(a) the rate of interest applying, from time to time, under schedule 2, part 2.2 (Interest after judgment);

(b) if the court considers that another rate is appropriate—that rate.

(3) This rule does not limit the court's powers to enforce its orders or to punish contempt of court.

773 Receiver—powers

(1) A receiver has the powers of a receiver and manager, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court may authorise a receiver to do anything a party might do.

(3) The court may authorise the receiver to do the thing—

(a) either in the receiver's name or the party's name; and

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(b) either generally or in a particular case; and

(c) whether or not the party is a person with a legal disability.

(4) If the party is a person with a legal disability, the authorisation has effect as if the party were not a person with a legal disability.

(5) This rule does not limit the court's powers to authorise a receiver to do anything.

774 Receiver—duty in relation to property

(1) This rule applies if a receiver is in possession of property.

(2) The receiver must manage and deal with the property according to the requirements of the laws of the State or Territory where the property is situated, in the same way in which the owner or possessor would be bound to do if in possession.

775 Receiver—liability

A receiver of any property may, without the court's leave, be sued in relation to an act done or omission made in exercising any of the receiver's powers in relation to the property.

776 Receiver—death of

(1) If a receiver dies, the court may, on the application of a party, make any orders it considers appropriate about—

(a) the filing and passing of accounts by—

(i) the receiver's personal representative; or

(ii) anyone else who has, or has had, possession or control of property the subject of the receivership; and

(b) the payment into court of any amount shown to be owing; and

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(c) the delivery of property the subject of the receivership.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court must not make an order under subrule (1) unless the application for the order has been served on the receiver's personal representative or anyone else affected by the order.

Division 2.9.6 Sales of land by court order

780 Meaning of *land*—div 2.9.6

In this division:

land includes an interest in land.

781 Application—div 2.9.6

This division applies only in relation to a proceeding in the Supreme Court in relation to land.

782 Sale of land—order

The court may order—

(a) that all or part of the land be sold before the proceeding is decided; and

(b) that any party in receipt of the rents or profits of all or part of the land, or otherwise in possession of all or part of the land, give possession to the person that the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

783 Sale of land—conduct of sale

(1) The court may appoint a party or someone else to have the conduct of the sale if the court—

(a) makes an order under rule 782 that land be sold; or

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(b) by a judgment, orders the sale of land.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or directions under this rule.

(2) The court may direct a party to join in the sale and conveyance or transfer or in another matter relating to the sale.

(3) The court may permit the person having the conduct of the sale to sell the land in a way the person considers appropriate or give directions about conducting the sale.

(4) Directions given under subrule (3) may include the following:

(a) stating the kind of sale, including, for example, sale by contract conditional on the court's approval, private treaty or tender;

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) setting a minimum or reserve price;

(c) requiring payment of the purchase money into court or to a trustee or someone else;

(d) for settling the particulars and conditions of sale;

(e) for obtaining evidence of value;

(f) stating the remuneration to be allowed to a real estate agent or someone else.

784 Sale of land—certificate of sale result

(1) Unless the court otherwise orders, the result of a sale of land by an order of the court must be certified—

(a) for a public auction—by the real estate agent who conducted the sale; or

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(b) otherwise—by the person having the conduct of the sale or by the person's solicitor.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) The court may require that the certificate be verified by affidavit of the person certifying.

(3) The person required to give the certificate under subrule (1) must file the certificate and affidavit (if any) not later than 7 days after the day of settlement of the sale.

785 Mortgage, exchange or partition

If the court makes an order for the mortgage, exchange or partition of land, rule 783 (Sale of land—conduct of sale) and rule 784 (Sale of land—certificate of sale result) apply to the mortgage, exchange or partition, with necessary changes, in the same way as they apply to the sale of land under this division.

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Part 2.10 Offers of compromise

1000 Application—pt 2.10

This part is subject to the *Civil Law (Wrongs) Act 2002*, chapter 14 (Limitations on legal costs) and the *Road Transport (Third-Party Insurance) Act 2008*, part 4.8 (Mandatory final offers) and part 4.9 (Court proceedings).

1001 Definitions—pt 2.10

In this part:

judgment in favour of the defendant includes a dismissal of an originating application or an originating claim.

offer means an offer of compromise under rule 1002.

period of acceptance, for an offer, means the period when the offer is open for acceptance.

1002 Making offer

(1) A party may, by written notice, make an offer to another party to compromise any claim in proceedings, either in whole or in part, on stated terms.

(2) An offer under this rule must—

(a) identify—

(i) the claim or part of the claim to which it relates; and

(ii) the proposed orders for disposal of the claim or part of the claim including, if a monetary judgment is proposed, the amount of the judgment; and

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(b) if the offer relates only to part of the proceedings, include a statement—

(i) for an offer by the plaintiff—stating whether the remainder of the proceedings will be abandoned or pursued; or

(ii) for an offer by a defendant—stating whether the remainder of the proceedings will be defended or conceded; and

(c) not include an amount for costs or state that it is inclusive of costs; and

(d) state that the offer has been made in accordance with this part; and

(e) state the period of acceptance.

(3) An offer under this rule may propose—

(a) a judgment in favour of the defendant—

(i) with no order as to costs; or

(ii) despite subrule (2) (c), with an order that the defendant will pay to the plaintiff a stated amount for the plaintiff's costs; or

(b) that the costs as agreed or assessed up to the time of the offer will be paid by the person making the offer; or

(c) that the costs as agreed or assessed on a party and party basis or indemnity basis will be paid out of a stated estate or fund identified in the offer.

(4) If the offeror makes an offer before the offeree is given particulars of the offeror's claim, and documents available to the offeror necessary for the offeree to properly consider the offer, the offeree may, within 14 days after receiving the offer give notice to the offeror that—

(a) the offeree is unable to assess the reasonableness of the offer because of the lack of particulars or documents; and

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(b) if rule 1010 applies—the offeree will seek an order under rule 1010 (2).

(5) The end of a period of acceptance for an offer—

(a) for an offer made 2 months or more before the date set down for the start of the trial—must be not less than 28 days after the day the offer is made; and

(b) in any other case—must be after a period that is reasonable in the circumstances.

(6) Unless the notice of offer otherwise provides, an offer providing for the payment of money or doing of an act is taken to provide for the payment or doing of the act within 28 days after the offer is accepted.

(7) Unless the notice of offer otherwise provides, an offer is made without prejudice.

(8) A party may make more than 1 offer in relation to the same claim.

(9) Unless the court orders otherwise, an offer may not be withdrawn during the period of acceptance for the offer.

(10) A notice of offer purporting to exclude, modify or restrict rule 1010 or rule 1011 is invalid.

1003 Acceptance of offer

(1) A party may accept an offer by serving written notice on the offeror at any time during the period of acceptance for the offer.

(2) The offer may be accepted even if a further offer is made during the period of acceptance for the offer.

(3) If an offer is accepted under this rule, any party to the offer may apply for judgment to be entered accordingly.

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1004 Withdrawal of acceptance

(1) A party who accepts an offer may, by written notice served on the offeror, withdraw the acceptance if—

(a) the offer provides for the doing of an act or for payment of money, and the act is not done or the money is not paid to the offeree or into court within 28 days after acceptance of the offer or within another time provided for in the offer; or

(b) the court grants the party leave to withdraw the acceptance.

(2) If the party withdraws acceptance of the offer—

(a) except where paragraph (b) provides otherwise, all steps in the proceedings that were taken as a consequence of the acceptance no longer have effect; and

(b) the court may, after the offer is withdrawn or when granting leave to withdraw the offer, give directions that—

(i) restore the parties as nearly as possible to their positions at the time of acceptance; and

(ii) give effect to any steps in the proceedings taken as a consequence of the acceptance; and

(iii) provide for the further conduct of the proceedings.

1005 Failure to comply with accepted offer

(1) If the plaintiff, as a party to an accepted offer, fails to comply with the terms of the offer, the defendant is entitled—

(a) to a judgment or order that is appropriate to give effect to the terms of the accepted offer; or

(b) to an order that the proceedings be dismissed, and to judgment accordingly, as the defendant elects, unless the court orders otherwise.

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(2) If the defendant, as a party to an accepted offer, fails to comply with the terms of the offer, the plaintiff is entitled—

(a) to a judgment or order that is appropriate to give effect to the terms of the accepted offer; or

(b) to an order that the defence be struck out, and to judgment accordingly, as the plaintiff elects, unless the court orders otherwise.

(3) If a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceedings has made a counterclaim that is not the subject of the accepted offer, the court—

(a) may make an order or give a judgment under this rule; and

(b) may make an order as to the further conduct of proceedings on the counterclaim it considers appropriate.

1006 Disclosure of offer to court

(1) No statement that an offer has been made may be included in any pleading or affidavit.

(2) If an offer is not accepted, no communication in relation to the offer may be disclosed to the court at trial.

(3) Despite subrule (2), an offer may be disclosed to the court—

(a) if a notice of offer provides that the offer is not made without prejudice; or

(b) to the extent necessary to enable the offer to be taken into account for determining an amount of interest up to judgment; or

(c) after all questions of liability and relief have been determined, to the extent necessary to determine questions as to costs.

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1007 Compromises in certain Supreme Court proceedings

(1) This rule applies to proceedings in the Supreme Court concerning—

(a) the administration of a deceased person's estate; or

(b) property the subject of a trust; or

(c) the construction of an Act, instrument or other document, involving any matter in which 1 or more people have the same interest or liability.

(2) If a compromise affects a person who is not a party but who has the same interest or liability, and the court is satisfied that the compromise will benefit the person, the court may approve a compromise that—

(a) 1 party has agreed to; or

(b) the court has sanctioned on behalf of the party.

(3) A compromise under subrule (2) binds the person who is not a party unless the court's approval of the compromise has been obtained by fraud or nondisclosure of material facts.

1008 Offer to contribute

(1) An offer in a proceeding must not be brought to the attention of the court until all questions of liability or amount of debt or damages have been decided, if in the proceeding—

(a) one party (***the first party***) stands to be held liable to another party (***the second party***) to contribute towards any debt or damages which may be recovered against the second party in the proceeding; and

(b) the first party, at any time after filing a notice of intention to respond or defence, makes an offer to the second party to contribute to the debt or damages; and

(c) the offer is made without prejudice to the first party's defence.

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(2) In this rule:

debt or damages includes any interest up to judgment claimed on any debt or damages.

1009 Offer accepted and no provision for costs

(1) This rule applies if an offer—

(a) is accepted in relation to a claim; and

(b) does not make provision for costs in relation to the claim.

(2) If the offer proposed a judgment in favour of the plaintiff in relation to the claim, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to the time when the offer was made.

(3) If the offer proposed a judgment in favour of the defendant in relation to the claim (including a dismissal of an originating application or originating claim), the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a party and party basis up to the time when the offer was made.

1010 Offer not accepted and judgment no less favourable to plaintiff

(1) This rule applies if an offer is made by the plaintiff in relation to a claim, but not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim no less favourable to the plaintiff than the terms of the offer.

(2) Unless the court orders otherwise, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim—

(a) if the claim is a personal injury claim—assessed on a solicitor and client basis for the whole of the proceeding; or

(b) in any other case—

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(i) assessed on a party and party basis up to the time when the costs are to be assessed on a solicitor and client basis under subparagraph (ii); and

(ii) assessed on a solicitor and client basis—

(A) if the offer was made before the first day of the trial—from the day the period for acceptance of the offer ends; and

(B) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1011 Offer not accepted and judgment no more favourable to plaintiff

(1) This rule applies if an offer is made by the defendant in relation to a claim, but not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim no more favourable to the plaintiff than the terms of the offer.

(2) Unless the court orders otherwise—

(a) if the claim is a personal injury claim—the plaintiff—

(i) is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to and including the day the offer was made; and

(ii) is not entitled to an order against the defendant for the plaintiff's costs in relation to the claim after the day the offer was made; but

(iii) is not required to pay the defendant's costs in relation to the claim on and from the day the offer was made; or

(b) in any other case—

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(i) the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to the time when the defendant is entitled to costs under subparagraph (ii); and

(ii) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a party and party basis—

(A) if the offer was made before the first day of the trial—from the day the period for acceptance of the offer ends; and

(B) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1012 Offer not accepted and judgment no less favourable to defendant

(1) This rule applies if the offer is made by the defendant, but not accepted by the plaintiff, and the defendant obtains an order or judgment on the claim no less favourable to the defendant than the terms of the offer.

(2) Unless the court orders otherwise—

(a) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, to be assessed on a party and party basis, up to the time when the defendant is entitled to costs under paragraph (b); and

(b) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a solicitor and client basis—

(i) if the offer was made before the first day of the trial—on and from the day after the offer was made; and

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(ii) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1013 Costs in relation to interest

(1) This rule applies if a plaintiff obtains an order or judgment for the payment of a debt or damages, and—

(a) the amount payable under the order or for which the judgment is given includes interest or damages in the nature of interest; or

(b) the court, by a separate order, awards the plaintiff interest or damages in the nature of interest in relation to the amount.

(2) In determining the consequences for costs under rule 1010, rule 1011 or rule 1012, the court must disregard the interest, or damages in the nature of interest, that relates to the period after the day the offer was made.

(3) For this rule, the court may be informed that the offer was made, and the date that the offer was made, but must not be informed of its terms.

1014 Miscellaneous

(1) Before the court makes an order under rule 1010 or rule 1011, the party to whom the offer was made may request that the party making the offer (the ***offeror***) satisfy the court that the offeror was at all material times willing and able to carry out the offer.

(2) If the court is satisfied that the offeror was at all material times willing and able to carry out the offer, then, unless the court orders otherwise, the party making the request must pay the costs of the offeror caused by the request.

(3) If the court is not satisfied that the offeror was at all material times willing and able to carry out the offer, then, unless the court orders otherwise—

(a) rule 1010 and rule 1011 do not apply; and

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(b) the offeror must pay the costs of the party making the request caused by the request.

(4) Unless the court orders otherwise, any application for an order for costs under rule 1010 or rule 1011 must be made immediately after the order or judgment giving rise to the entitlement to the order for costs is given.

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Part 2.11 Resolving proceedings early

Division 2.11.1 Uncontested debts and liquidated demands

1100 Meaning of *prescribed costs amount*—div 2.11.1

In this division:

prescribed costs amount means the amount applying under schedule 3, part 3.1 (Claim for debt or liquidated demand).

1101 Application—div 2.11.1

This division applies to a proceeding that—

(a) is for a debt or liquidated demand only; and

(b) is started by originating claim.

Note A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

1102 Stay of debt etc proceeding on payment of amount sought

(1) The proceeding is stayed if, within the time allowed for filing any notice of intention to respond or defence, the defendant pays the plaintiff—

(a) the amount claimed; and

(b) any amounts claimed for interest; and

(c) the prescribed costs amount plus any filing and service fees actually paid.

Note Rule 102 deals with filing and service of a notice of intention to respond or defence.

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(2) If the proceeding is in the Supreme Court, and could properly have been brought in the Magistrates Court, the prescribed costs amount payable by the defendant under subrule (1) (c) is the prescribed costs amount for the Magistrates Court.

(3) This rule does not apply to the assessment or enforcement of costs.

1103 Assessment of costs for stayed debt etc proceeding

(1) This rule applies if a proceeding is stayed under rule 1102 (1).

(2) The plaintiff may have the plaintiff's costs assessed if—

(a) the plaintiff claims for costs and disbursements (other than any filing and service fees actually paid) more than the prescribed costs amount; or

(b) the plaintiff claims assessed costs.

(3) If the proceeding is in the Supreme Court, and could properly have been brought in the Magistrates Court, the prescribed costs amount mentioned in subrule (2) (a) is the prescribed costs amount for the Magistrates Court.

1104 Judgment on acknowledgment of debt or liquidated demand

(1) The defendant may file a statement acknowledging—

(a) the amount claimed; and

(b) if interest is claimed—interest.

Note See approved form 2.34 (Acknowledgement of debt or liquidated demand) AF2006-279.

(2) Subrule (1) does not apply if the defendant has filed a defence or the plaintiff has filed an application for default judgment in accordance with these rules.

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(3) On the filing of a statement under subrule (1), the court may enter judgment for the plaintiff for—

(a) the amount claimed; and

(b) if interest is claimed—

(i) interest worked out in accordance with the rate stated in the claim for relief to the date of judgment; or

(ii) if no rate of interest is stated in the claim for relief—interest to the date of judgment, or a lump sum instead of that interest, decided by the court; and

(c) if costs are claimed—

(i) if the plaintiff has claimed costs and disbursements not more than the prescribed costs amount (plus any filing and service fees actually paid)—the amount claimed for costs and disbursements; or

(ii) in any other case—costs to be agreed or assessed.

(4) The court may enter judgment for the plaintiff without a hearing.

(5) In deciding interest or a lump sum for subrule (3) (b), the court may have regard to the rate of interest applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

(6) If the period for which interest is to be awarded is not stated in the claim for relief, interest is recoverable only from the date of the issue of the originating claim.

(7) If the proceeding is in the Supreme Court, and could properly have been brought in the Magistrates Court, the prescribed costs amount mentioned in subrule (3) (c) (i) is the prescribed costs amount for the Magistrates Court.

(8) Judgment entered under subrule (3) fully discharges all the plaintiff's claims in the proceeding.

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(9) If default judgment against the defendant has been set aside under rule 1128, the defendant must not file a statement acknowledging the amount claimed without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 2.11.2 Default by plaintiff

1110 Default by plaintiff—dismissal of proceeding

(1) A defendant in a proceeding may apply to the court for an order dismissing the proceeding for want of prosecution if the plaintiff—

(a) is required to take a step in the proceeding required by these rules, or to comply with an order of the court, not later than the end of a particular time; and

(b) does not do what is required before the end of that time.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court may dismiss the proceeding or make any other order it considers appropriate.

(3) An order dismissing the proceeding for want of prosecution may be set aside only on appeal or if the parties agree to it being set aside.

(4) However, the court may amend or set aside an order dismissing the proceeding for want of prosecution made in the absence of the plaintiff without the need for an appeal.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

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Division 2.11.3 Default by defendant

1115 Definitions—div 2.11.3

In this division:

affidavit in support—see rule 1119 (Default judgment—relevant affidavits).

in default—see rule 1117 (When is a defendant *in default*—generally).

qualified person means any of the following:

(a) the plaintiff's solicitor;

(b) if the plaintiff is a person with a legal disability—the person's litigation guardian;

(c) if the person is a corporation—a member or officer of the corporation with knowledge of the facts as far as they are known to the corporation;

(d) if the plaintiff is a corporation for which a receiver or a receiver and manager has been appointed—the receiver or the receiver and manager;

(e) if the plaintiff is a corporation for which a liquidator, provisional liquidator or administrator has been appointed—the liquidator, provisional liquidator or administrator;

(f) if the plaintiff is an incorporated body that can sue and be sued—a member or officer of the body with knowledge of the facts as far as they are known to the body;

(g) if the plaintiff is the Commonwealth, a State or a Territory—an officer or employee of the Commonwealth, State or Territory with knowledge of the facts as far as they are known to the Commonwealth, State or Territory;

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(h) in any other case—an officer, employee or agent of the plaintiff having knowledge of the facts as far as they are known to the plaintiff.

1116 Application—div 2.11.3

This division applies to—

(a) a proceeding started by originating claim; and

(b) a counterclaim, or third-party notice, made in a proceeding started by originating claim.

Note 1 A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

Note 2 This division applies to a counterclaim against a person not a party to the original proceeding as if it were a proceeding started by originating claim (see r 462 (4) (a) and (5)).

Note 3 This division applies to a notice including a subsequent party as if the notice were a third-party notice (see r 322 (Third-party notice—fourth and subsequent parties)).

1117 When is a defendant *in default*—generally

(1) For this division, a defendant is ***in default*** in relation to a plaintiff's claim for relief if—

Note ***Plaintiff*** and ***defendant*** are defined in r 20.

(a) for a proceeding started by originating claim—

(i) the defendant does not file a notice of intention to respond or defence within the time required by rule 102 (Notice of intention to respond or defence—filing and service) or any further period agreed between the relevant parties or allowed by the court; or

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(ii) the defendant files a notice of intention to respond within the time required by rule 102 or any further period agreed by the parties or allowed by the court, but does not file a defence within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court; or

(iii) the defendant files a conditional notice of intention to respond that becomes an unconditional notice of intention to respond but does not file a defence within the time required by rule 111 (Conditional notice of intention to respond) or any further period agreed between the relevant parties or allowed by the court; or

(iv) the defendant files a defence but the court orders the defence to be struck out; and

Note Subrule (1) (a) applies to a person not a party to the original proceeding who is included as a party by a counterclaim (see r 462 (4) (a) and (5)).

(b) for a counterclaim—

(i) the defendant to the counterclaim does not file an answer to the counterclaim within the time required by rule 466 (3) (Counterclaim—answer to) or any further period agreed between the relevant parties or allowed by the court; or

(ii) the defendant to the counterclaim files an answer to the counterclaim but the court orders the answer to be struck out; and

(c) for a third-party notice—

(i) the third party does not file a notice of intention to respond or defence within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court; or

(ii) the third party files a notice of intention to respond within the time required by rule 102 or any further period agreed

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by the parties or allowed by the court, but does not file a defence within the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court; or

(iii) the third party files a conditional notice of intention to respond that becomes an unconditional notice of intention to respond but does not file a defence within the time required by rule 111 or any further period agreed between the relevant parties or allowed by the court; or

(iv) the third party files a defence but the court orders the defence to be struck out.

Note 1 Pt 2.3 (Notice of intention to respond and defence) applies to a third-party notice (see r 311 (Third-party notice—notice of intention to respond and defence)).

Note 2 Rule 425 (Pleadings—striking out) deals with striking out of defences and answers.

Note 3 Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(2) However, the defendant is not ***in default*** in relation to the plaintiff's claim for relief if—

(a) for a proceeding started by originating claim—

(i) the proceeding is stayed under rule 1102 (Stay of debt etc proceeding on payment of amount sought); or

(ii) the defendant files a statement under rule 1104 (Judgment on acknowledgment of debt or liquidated demand); or

(iii) the defendant files a defence after the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the defendant; or

(b) for a counterclaim—the defendant to the counterclaim files an answer to the counterclaim after the time required by

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rule 466 (3) or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the defendant to the counterclaim; or

(c) for a third-party notice—the third party files a defence after the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the third party.

1118 Default judgment—generally

(1) If a defendant is in default in relation to a plaintiff's claim for relief, the plaintiff—

(a) may apply to the court for judgment to be entered under this division against the defendant; and

(b) may carry on the proceeding against any other party to the proceeding.

(2) If rule 1126 (Default judgment—other claims) applies in relation to the application, the application must be accompanied by the relevant affidavits.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 For the meaning of ***relevant affidavits***, see r 1119.

(3) If rule 1126 does not apply to the application, the application is made by filing a draft judgment accompanied by the relevant affidavits.

Note See approved form 2.35 (Default judgment) AF2016-103.

(4) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3).

(5) The draft judgment and relevant affidavits mentioned in subrule (3) need not be served on anyone unless the court otherwise orders on its own initiative.

(6) The court may enter judgment under this division (other than rule 1126) in favour of the plaintiff without a hearing.

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1119 Default judgment—relevant affidavits

(1) For an application under rule 1118, the ***relevant affidavits*** are—

(a) for a proceeding started by originating claim—an affidavit of service of the originating claim; and

Note This division applies to a counterclaim against a person not a party to the original proceeding as if it were a proceeding started by originating claim (see r 462 (4) (a) and (5)).

(b) an affidavit in support of the application (the ***affidavit in support***) sworn by—

(i) the plaintiff or, if there are 2 or more plaintiffs, any plaintiff; or

(ii) a qualified person.

Note See approved form 2.36 (Affidavit in support of application for default judgment for debt or liquidated demand) AF2006-281.

(2) The plaintiff's solicitor may swear an affidavit in support only if the source of the knowledge of the facts deposed is—

(a) the plaintiff; or

(b) if there are 2 or more plaintiffs—any plaintiff; or

(c) another qualified person.

(3) An affidavit in support must be sworn not earlier than 14 days before the day the affidavit is filed in the court.

Note For what must be included in an affidavit of support, see the following rules dealing with default judgment for particular kinds of claims:

- r 1120 (Default judgment—debt or liquidated demand)
- r 1122 (Default judgment—unliquidated damages)
- r 1123 (Default judgment—detention of goods)
- r 1124 (Default judgment—recovery of possession of land)
- r 1125 (Default judgment—mixed claims)
- r 1126 (Default judgment—other claims).

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1120 Default judgment—debt or liquidated demand

(1) This rule applies if a plaintiff's claim for relief against a defendant in default is for a debt, liquidated demand or claim for unliquidated damages mentioned in rule 418 (2) (Pleadings—amount of unliquidated damages), with or without interest.

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the court may enter judgment for the plaintiff for an amount not more than the amount claimed, together with—

(a) if interest is claimed—the amount of interest stated in the affidavit in support; and

(b) if costs are claimed—

(i) the amount of costs stated in the affidavit in support; or

(ii) costs to be agreed or assessed.

(3) The affidavit in support mentioned in rule 1119 must—

(a) state the amount owing to the plaintiff, in relation to the claim for relief, at the time the originating claim was filed; and

(b) give particulars of any reduction of the amount owing, and costs, because of any payments made, or credits accrued, since the originating claim was filed; and

(c) if interest is claimed, include—

(i) a statement of the amount of interest claimed; and

(ii) a statement that the amount of interest is worked out in accordance with—

(A) the rate stated in the plaintiff's claim for relief; or

(B) the rate of interest applying from time to time under schedule 2, part 2.1 (Interest up to judgment); and

(d) if costs are claimed, include—

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(i) under schedule 3, part 3.2 (Default judgment)—

(A) a statement of the amount of costs claimed; and

(B) a copy of each invoice and receipt for the filing and service fees paid in relation to the claim for relief; or

(ii) in any other case—a statement that costs are to be agreed or assessed.

(4) If the period for which interest is to be awarded is not stated in the claim for relief, interest is recoverable only from the date of the issue of the originating claim.

1121 Default judgment for debt or liquidated demand—assessment of costs

(1) This rule applies if—

(a) a plaintiff's claim for relief against a defendant in default is only for a debt or liquidated demand, with or without interest; and

(b) the court enters judgment for the plaintiff under rule 1120.

(2) The plaintiff's costs and disbursements (plus any filing and service fees actually paid) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 3.2 (Default judgment).

(3) Subrule (2) is subject to rule 1725 (Solicitors' costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction).

(4) The plaintiff's costs and disbursements must be agreed or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying under schedule 3, part 3.2 (Default judgment).

Note See r 1702 (Costs—agreement about costs).

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1122 Default judgment—unliquidated damages

(1) This rule applies if a plaintiff's claim for relief against a defendant in default is for unliquidated damages, with or without another claim.

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the court may enter judgment for the plaintiff against the defendant for damages to be assessed.

(3) The affidavit in support mentioned in rule 1119 (Default judgment—relevant affidavits) must state—

(a) that the proceeding has not been settled with the defendant; and

(b) any amounts paid in relation to the damages.

(4) For an application in the Magistrates Court, the court may decide the claim without listing the matter for hearing.

1123 Default judgment—detention of goods

(1) This rule applies if a plaintiff's claim for relief against a defendant in default is for the detention of goods only.

(2) On application by the plaintiff under rule 1118, the court may enter judgment for the plaintiff against the defendant, in accordance with the plaintiff's claim for relief, for either—

(a) the return of the goods to the plaintiff, or payment to the plaintiff of the value of the goods and costs; or

(b) payment to the plaintiff of the value of the goods and costs.

(3) The affidavit in support mentioned in rule 1119 must—

(a) state which goods have, and which have not, been delivered to the plaintiff since the originating claim or counterclaim was filed; and

(b) give particulars of any payments the defendant has made to the plaintiff for the goods, or state that no payments have been made, since the originating claim or counterclaim was filed; and

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(c) state the costs claimed.

(4) If the court enters judgment under subrule (2) (a), and the plaintiff subsequently applies for an order under this subrule, the court may make an order for the return of the goods to the plaintiff without the option of the defendant paying the value of the goods.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) If the court enters judgment under this rule for the return of goods, it may state a date before which the return must take place.

(6) If the court enters judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the plaintiff's application, order the defendant to pay the value of the goods to the plaintiff.

(7) In this rule:

value, of the goods, means the value as assessed by, or in accordance with the directions of, the court.

1124 Default judgment—recovery of possession of land

(1) This rule applies if a plaintiff's claim for relief against a defendant in default is for the recovery of possession of land only.

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the court may enter judgment for the plaintiff for—

(a) recovery of possession of the land as against the defendant; and

(b) the following costs:

(i) costs for issuing the originating claim or counterclaim;

(ii) costs for obtaining judgment;

(iii) any other fees and payments, to the extent they have been reasonably incurred and paid.

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(3) If, before judgment is entered, a person files an application under division 2.4.2 (Including and substituting parties) for the person to be included as a defendant, the court must not enter judgment under this rule until it disposes of the application.

(4) The affidavit in support mentioned in rule 1119 (Default judgment—relevant affidavits) must—

(a) identify anyone (other than the parties to the proceeding) who is in possession of the land or any part of it—

(i) at the time the originating claim was filed; or

(ii) if the claim for possession arises from an amendment to the originating claim—at the time the amendment was made; and

Note This division applies to a counterclaim against a person not a party to the original proceeding as if it were a proceeding started by originating claim (see r 462 (4) (a) and (5)).

(b) for each person mentioned in paragraph (a), state—

(i) that the person's possession of the land is not to be disturbed; or

(ii) that the person no longer possesses any part of the land; or

(iii) that the person has been served with the originating claim and that the person—

(A) has not applied for leave to file a notice of intention to respond or defence under rule 151 (Proceeding for possession of land—leave to file defence etc); or

(B) has been given leave to file a notice of intention to respond or defence but has not filed the notice or defence in accordance with rule 152 (Proceeding for possession of land—filing defence etc); and

(c) if the claim for possession of the land arises from a failure to pay the amount—give particulars of the failure; and

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(d) state the costs claimed.

1125 Default judgment—mixed claims

(1) This rule applies if a plaintiff's claims for relief against a defendant in default include 2 or more of the claims mentioned in the following rules and no other claim:

- rule 1120 (Default judgment—debt or liquidated demand)
- rule 1122 (Default judgment—unliquidated damages)
- rule 1123 (Default judgment—detention of goods)
- rule 1124 (Default judgment—recovery of possession of land).

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the plaintiff is entitled to have judgment entered for the plaintiff against the defendant on all or any of the claims that the plaintiff could obtain under those rules as if that were the plaintiff's only claim against the defendant.

(3) For an application under this rule, the affidavit in support mentioned in rule 1119 (Default judgment—relevant affidavits) must comply with the requirements of this division in relation to each claim.

1126 Default judgment—other claims

(1) This rule applies if a defendant is in default and the plaintiff is not entitled to apply for judgment under any of the following rules:

- rule 1120 (Default judgment—debt or liquidated demand)
- rule 1122 (Default judgment—unliquidated damages)
- rule 1123 (Default judgment—detention of goods)
- rule 1124 (Default judgment—recovery of possession of land).

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the court may enter the judgment it considers is justified on the plaintiff's claim for relief even if the judgment was not claimed.

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(3) The affidavit in support mentioned in rule 1119 (Default judgment—relevant affidavits) must state—

(a) that the proceeding has not been settled with the defendant; and

(b) the costs claimed.

1127 Default judgment—costs only

(1) The court may enter judgment for a plaintiff against a defendant in default for costs alone if, under this division—

(a) the plaintiff is entitled to judgment against the defendant for any relief and for costs; and

(b) the defendant satisfies the plaintiff's claim for relief; and

(c) because the defendant has satisfied the plaintiff's claim for relief, it is unnecessary for the plaintiff to continue the proceeding against the defendant.

(2) On application by the plaintiff under rule 1118 (Default judgment—generally), the court may enter judgment for the plaintiff against a defendant in default for costs alone if, whatever the plaintiff's claim for relief against the defendant—

(a) the defendant satisfies the plaintiff's claim for relief or complies with the plaintiff's demands; or

(b) it otherwise becomes unnecessary for the plaintiff to continue the proceeding against the defendant.

1128 Default judgment—setting aside etc

(1) The court may, by order, amend or set aside a judgment entered under this division, and any enforcement of it.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) Without limiting rule 6901 (Orders may be made on conditions), an order may be made on any of the following conditions:

(a) conditions about costs;

(b) conditions about giving security.

Division 2.11.4 Default by defendant—partial defence

1135 Definitions—div 2.11.4

In this division:

in default—see rule 1137 (When is a defendant *in default*—partial defence).

undefended part of the claim—see rule 1137.

1136 Application—div 2.11.4

This division applies to—

(a) a proceeding started by originating claim; and

(b) a counterclaim, or third-party notice, made in a proceeding started by originating claim.

Note 1 A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

Note 2 This division applies to a counterclaim against a person not a party to the original proceeding as if it were a proceeding started by originating claim (see r 462 (4) (a) and (5)).

Note 3 This division applies to a notice including a subsequent party as if the notice were a third-party notice (see r 322 (Third-party notice—fourth and subsequent parties)

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1137 When is a defendant *in default*—partial defence

(1) A defendant is ***in default*** in relation to a part of a plaintiff's claim for relief (the ***undefended part of the claim***) if—

(a) the defendant files a defence but not to the undefended part of the claim; and

(b) the undefended part of the claim is a separate cause of action or is severable from the rest of the claim; and

(c) the court gives leave to the plaintiff to enter judgment against the defendant for the undefended part of the claim.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) However, a defendant is not ***in default*** in relation to an undefended part of the claim if—

(a) for a proceeding started by originating claim—

(i) the proceeding, or the undefended part of the claim, is stayed under rule 1102 (Stay of debt etc proceeding on payment of amount sought); or

(ii) the defendant files a statement under rule 1104 (Judgment on acknowledgment of debt or liquidated demand) in relation to the undefended part of the claim; or

(iii) the defendant files a defence to the undefended part of the claim after the time required by rule 102 (Notice of intention to respond or defence—filing and service) or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the defendant in relation to the undefended part of the claim; or

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(b) for a counterclaim—the defendant to the counterclaim files an answer to the undefended part of the counterclaim after the time required by rule 466 (3) (Counterclaim—answer to) or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the defendant to the counterclaim in relation to the undefended part of the claim; or

(c) for a third-party notice—the third party files a defence after the time required by rule 102 or any further period agreed between the relevant parties or allowed by the court, but before a default judgment is entered against the third party in relation to the undefended part of the claim.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

1138 Default judgment—partial defence

(1) If a defendant is in default in relation to the undefended part of the claim, the plaintiff may—

(a) apply to the court for judgment to be entered under this division against the defendant in relation to the undefended part of the claim; and

(b) carry on the proceeding against—

(i) the defendant in relation to the rest of the proceeding; and

(ii) any other party to the proceeding.

(2) If rule 1126 (Default judgment—other claims) applies in relation to the application, the application must be accompanied by the relevant affidavits.

Note 1 Rule 1126 may be applied to the undefended part of the claim by r 1139.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

Note 3 For the meaning of ***relevant affidavits***, see r 1119 (as applied by r 1139).

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(3) If rule 1126 does not apply in relation to the application, the application is made by filing a draft judgment accompanied by the relevant affidavits.

(4) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3).

(5) The draft judgment and relevant affidavits mentioned in subrule (3) need not be served on anyone unless the court otherwise orders on its own initiative.

(6) The court may enter judgment under this division in favour of the plaintiff in relation to the undefended part of the claim without a hearing.

(7) Subrule (2) does not apply to the undefended part of the claim if rule 1126 would apply to the undefended part of the claim if it were a separate claim for relief.

1139 Default judgment—application of div 2.11.3

(1) Division 2.11.3 (other than a non-applied rule) applies to the undefended part of the claim as if it were a separate claim for relief.

(2) In this rule:

non-applied rule means any of the following rules:

- rule 1116 (Application—div 2.11.3)
- rule 1117 (When is a defendant *in default*—generally)
- rule 1118 (Default judgment—generally)
- rule 1121 (Default judgment for debt or liquidated demand—assessment of costs)
- rule 1127 (Default judgment—costs only).

(3) If the court enters judgment for the plaintiff against a defendant under this division, it must not make an order for costs in relation to the undefended part of the claim until judgment is entered on the defended part of the claim.

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Division 2.11.5 Summary judgment

1145 Application—div 2.11.5

(1) This division applies to—

(a) a proceeding started by originating claim; and

(b) a counterclaim, or third-party notice, made in a proceeding started by originating claim.

Note A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

(2) However, despite rule 39 (3) (Proceeding incorrectly started by originating application), this division applies to a proceeding started by an originating application only if the court orders the plaintiff to file and serve a statement of claim.

1146 Summary judgment—for plaintiff

(1) The plaintiff may, at any time after a defendant files a notice of intention to respond or defence, apply to the court for summary judgment against the defendant.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) The court may give judgment for the plaintiff against the defendant for all or a part of the plaintiff's claim for relief, unless satisfied that—

(a) the defendant has a good defence to the claim for relief on the merits; or

(b) sufficient facts are disclosed to entitle the defendant to defend the claim for relief generally.

(3) Without limiting subrule (2), the court may give judgment for the plaintiff for damages to be assessed.

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(4) The court may make any other order it considers appropriate.

Examples

1 The court may give the defendant leave to defend on conditions.

2 The court may order the defendant to pay an amount into court.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) If the plaintiff's claim is for the return of a particular goods (whether or not the claim includes a claim for hire or damages for detention), the court may make an order for the return of the goods to the plaintiff without giving the defendant the option of keeping the goods and paying the value of the goods.

Note For the enforcement of the order, see r 2441 (Enforcement—orders for return of goods etc).

(6) In this rule:

damages includes the value of goods.

1147 Summary judgment—for defendant

(1) A defendant may apply to the court for summary judgment against a plaintiff at any time after filing a notice of intention to respond or defence.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) The court may give judgment for the defendant against the plaintiff for the plaintiff's claim for relief (or part of it) if satisfied—

(a) that the claim (or part of it) is frivolous or vexatious; or

(b) that there is a good defence to the claim (or part of it) on the merits; or

(c) that the proceeding should be finally disposed of summarily or without pleadings.

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(3) The court may make any other order it considers appropriate.

Example

stay the proceeding

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1148 Claims not disposed of by summary disposal

(1) If the giving of judgment or the making of orders under this division does not dispose of all claims for relief in issue in a proceeding, the giving of judgment or making of the orders does not prevent the continuation of any part of the proceeding not disposed of.

(2) A second or later application under this division may be made with the court's leave.

1149 Evidence in summary judgment proceedings

(1) Evidence must be given by affidavit in support of an application under this division unless the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(2) An affidavit may contain statements of information and belief if the person making the affidavit states the sources of the information and the reasons for the belief.

(3) A party to an application under this division who intends to rely on a document must—

(a) annex or exhibit the document to an affidavit; or

(b) identify in an affidavit the provisions relied on to the extent the party is able to identify them.

(4) A person who makes an affidavit to be read in an application under this division may not be cross-examined without the court's leave.

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1150 Summary judgment applications—filing and service

(1) A party applying for judgment under this division against another party must file and serve the other party with the following documents at least 8 days before the return date for the application:

(a) the application;

(b) a stamped copy of each affidavit on which the party intends to rely.

Note ***Return date*** for an application is defined in the dictionary.

(2) At least 4 days before the return date, the other party must file and serve on the party a stamped copy of any affidavit on which the other party intends to rely.

(3) At least 2 days before the return date, the party must file and serve on the other party a stamped copy of any affidavit in reply to the other party's affidavit on which the party intends to rely.

(4) This rule applies despite anything in rule 6008 (Application in proceeding—filing and service).

1151 Summary judgment applications—directions etc

(1) This rule applies if—

(a) the court dismisses an application for judgment under this division; or

(b) a judgment under this division does not dispose of all claims for relief in a proceeding.

(2) The court may give directions about the future conduct of the proceeding.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for directions.

Note 2 The court has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

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1152 Summary judgment applications—costs

(1) If it appears to the court that a party who applied for judgment under this division was or ought reasonably to have been aware that a respondent to the application relied on a point that would entitle that party to have the application dismissed, the court may dismiss the application and order costs to be paid on an indemnity basis.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) This rule does not limit the court's powers in relation to costs.

1153 Summary judgment—stay of enforcement

The court may order a stay of the enforcement of a judgment given under this division for the time it considers appropriate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

1154 Summary judgment—relief from forfeiture

A tenant has the same right to relief against forfeiture for nonpayment of rent after judgment for possession of land is given under this division as if the judgment had been given after a trial.

1155 Summary judgment—setting aside

The court may amend or set aside a judgment given on an application under this division against a party who did not appear at the hearing of the application.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Division 2.11.6 Discontinuance and withdrawal

1160 Discontinuance or withdrawal by plaintiff

(1) A plaintiff may discontinue a proceeding, or withdraw a part of it, at any time before the court sets a hearing date for the proceeding.

(2) A plaintiff may discontinue a proceeding, or withdraw part of it, at any other time only with the court's leave or the agreement of the other active parties.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(3) Also, if there is more than 1 plaintiff, or a counterclaim against a plaintiff, a plaintiff may only discontinue or withdraw with the court's leave or the agreement of the other active parties.

(4) A plaintiff may discontinue against 1 or more defendants without discontinuing against other defendants.

(5) Each party who agrees to a proceeding being discontinued, or part of it being withdrawn, must agree in writing.

1161 Discontinuance or withdrawal of counterclaim by defendant

A defendant may discontinue a counterclaim, or withdraw part of it—

(a) before being served with the plaintiff's answer to the counterclaim; or

(b) after being served with the plaintiff's answer to the counterclaim—only with the court's leave or the agreement of the other active parties.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

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1162 Withdrawal of notice of intention to respond

A party may withdraw the party's notice of intention to respond at any time with the court's leave or the agreement of the other parties.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

1163 Costs of discontinuance or withdrawal

(1) A party who discontinues or withdraws is liable to pay—

(a) the costs of the party to whom the discontinuance or withdrawal relates up to when the notice of discontinuance or withdrawal is served on the party; and

(b) the costs of another party or parties caused by the discontinuance or withdrawal up to when the notice of discontinuance or withdrawal is served on the party.

(2) If a party discontinues or withdraws with the court's leave, the court may make the order for costs it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

1164 Withdrawal of defence or further pleading

(1) A party may withdraw all or part of the answer to a counterclaim.

(2) A defendant may withdraw all or part of the defence.

(3) For a proceeding started by originating application, a defendant may withdraw all or part of an affidavit.

(4) However, this rule does not allow a party to withdraw an admission or another matter operating for the benefit of another active party without the other party's agreement or the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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1165 Notice of discontinuance or withdrawal

(1) A discontinuance or withdrawal for which the court's leave is not required may be made by filing a notice of discontinuance or withdrawal and serving a stamped copy of the notice on the other active parties to the proceeding.

Note 1 See approved form 2.37 (Notice of discontinuance or withdrawal) AF2006-282.

Note 2 A party may withdraw an admission made in a pleading only with the court's leave (see r 492 (Admissions—withdrawal)).

(2) A discontinuance or withdrawal for which the court's leave is required is made by the order giving leave and a notice of discontinuance or withdrawal is not required.

1166 Discontinuance or withdrawal by party representing someone else etc

(1) If a party represents someone else in a proceeding, the party may discontinue the proceeding, or withdraw part of it, only with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) If a party does not represent someone else in a proceeding, and the party discontinues or withdraws, the party (or the party's solicitor) must certify in the notice of discontinuance or withdrawal that the party does not represent someone else in the proceeding.

1167 Discontinuance or withdrawal—subsequent proceeding

(1) A discontinuance or withdrawal under this division is not a defence to another proceeding on the same or substantially the same ground.

(2) Subrule (1) is subject to the conditions of any agreement to the discontinuance or withdrawal or any leave to discontinue or withdraw.

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(3) A party who is served with another party's notice of withdrawal may continue with the proceeding as if the other party's notice of intention to respond or defence had not been filed.

1168 Consolidated proceedings and counterclaims

The plaintiff's discontinuance of a proceeding does not prejudice a proceeding consolidated with it or a counterclaim made by the defendant.

1169 Stay pending payment of costs

(1) This rule applies if, because of a discontinuance or withdrawal under this division, a party is liable to pay the costs of another party, and the party, before paying the costs, starts another proceeding on the same or substantially the same grounds.

(2) The court may order a stay of the subsequent proceeding until the costs are paid.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.11.7 Mediation and neutral evaluation

1175 Purpose—div 2.11.7

This division does not prevent the parties to a proceeding from agreeing to, and arranging for, mediation or neutral evaluation of any matter otherwise than under this division.

1176 Definitions—div 2.11.7

(1) For this division, ***mediation*** is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

(2) For this division, ***mediation session*** means a meeting arranged for the mediation of a matter under this division.

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(3) For this division, ***neutral evaluation*** is a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute.

(4) The evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion about the likely outcome of the proceeding, including any likely findings of liability or the award of damages.

(5) For this division, ***neutral evaluation session*** means a meeting arranged for the neutral evaluation of a matter under this division.

1177 Mediation—appointment of mediator

(1) A person can be a mediator if the person—

(a) is an accredited mediator; and

(b) is appointed by the court as a mediator.

(2) The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a mediator under this rule.

(3) In this rule:

accredited mediator—see the Act, section 52A.

1178 Neutral evaluation—appointment of evaluator

(1) The following people can be an evaluator:

(a) the registrar of the court;

(b) someone else that the court considers has the skills and qualifications to be an evaluator and appoints as an evaluator.

(2) The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of an evaluator under this rule.

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1179 Mediation or neutral evaluation—referral by court

(1) The court may, by order, refer a proceeding, or any part of a proceeding, for mediation or neutral evaluation.

(2) The court may make an order on application by a party to the proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If the court makes an order under subrule (1) for mediation, the mediation must be undertaken only by a mediator appointed by the court.

(4) If the court makes an order under subrule (1) for neutral evaluation, the neutral evaluation must be undertaken only by an evaluator appointed by the court.

1180 Mediation or neutral evaluation—duty of parties to take part

Each party to a proceeding, or part of a proceeding, referred for mediation or neutral evaluation under rule 1179 has a duty to take part, genuinely and constructively, in the mediation or neutral evaluation.

1181 Mediation or neutral evaluation—costs

(1) The costs of a mediation or neutral evaluation are payable—

(a) by the parties to the proceeding, in the proportions they agree among themselves; or

(b) if the court makes an order about the payment of the costs—by 1 or more of the parties, in the way stated in the order.

(2) In this rule:

costs includes costs incurred by the court or a party or someone else.

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1182 Mediation or neutral evaluation—agreements and arrangements arising from sessions

(1) The court may make orders to give effect to an agreement or arrangement between the parties arising out of a mediation session or neutral evaluation.

(2) This division does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session or neutral evaluation, in relation to the matters that are the subject of the mediation session or neutral evaluation.

Note For provisions about privilege, secrecy and protection in relation to mediators, see the Act, pt 5A.

1183 Neutral evaluation—privilege

(1) The same privilege in relation to defamation that exists for a proceeding in the court, and a document in a proceeding, exists for—

(a) a neutral evaluation session; or

(b) a document or thing sent to or produced to an evaluator; or

(c) a document or thing sent to, or produced at, the court to enable a neutral evaluation session to be arranged.

(2) However, the privilege under subrule (1) only extends to a publication made—

(a) at a neutral evaluation session; or

(b) as provided by subrule (1) (b) or (c); or

(c) as provided in rule 1184.

(3) In this rule:

neutral evaluation session includes any steps taken while making arrangements for the session or during the follow-up of a session.

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1184 Evaluators—secrecy

An evaluator may disclose information obtained in relation to the administration or enforcement of this division only in the following circumstances:

(a) with the consent of the person who provided the information;

(b) for the administration or enforcement of this division;

(c) if there are reasonable grounds to believe the disclosure is necessary to prevent or reduce the danger of death or injury to anyone or damage to any property;

(d) if the disclosure—

(i) is reasonably required for the referral to an entity of any party to a neutral evaluation session; and

(ii) is made to assist the resolution of a dispute between the parties, or assist the parties in any other way; and

(iii) is made with the consent of the parties to the neutral evaluation session;

(e) in accordance with a requirement imposed under a territory law or a law of the Commonwealth (other than a requirement imposed by a subpoena or other compulsory process).

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

1185 Evaluators—protection from liability

An evaluator is not personally liable for anything done or omitted to be done honestly for a neutral evaluation session under this division.

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Part 2.12 Expert evidence

Note to pt 2.12

Pt 6.10 contains provisions about evidence generally.

Division 2.12.1 Expert evidence generally

1200 Purposes—pt 2.12

The purposes of this part are as follows:

(a) to ensure the court has control over the giving of expert evidence;

(b) to restrict expert evidence in a proceeding to that which is reasonably necessary to resolve the proceeding;

(c) to avoid unnecessary costs associated with parties retaining different experts;

(d) to ensure expert witnesses are bound by a code of conduct;

(e) if practicable and without compromising the interests of justice—to enable expert evidence to be given on an issue in a proceeding by a single expert agreed to by the parties or appointed by the court;

(f) if necessary to ensure a fair trial of a proceeding—to allow for 2 or more experts to give evidence on an issue in the proceeding.

1201 Meaning of *code of conduct*—pt 2.12

In this part:

code of conduct means the expert witness code of conduct in schedule 1.

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1202 Meaning of *expert*, *expert witness* and *expert report*

(1) In these rules:

expert, in relation to a proceeding, means a person who—

(a) has specialised knowledge about matters relevant to an issue arising in the proceeding based on the person's training, study or experience; and

(b) would, if called as a witness at the trial of the proceeding, be qualified to give opinion evidence as an expert witness in relation to the issue.

expert witness, in relation to a proceeding, means an expert appointed or engaged to do either or both of the following:

(a) to provide a report about the expert's opinion for use as evidence in the proceeding;

(b) to give opinion evidence in the proceeding.

(2) In these rules, an ***expert report***, in relation to a proceeding, is a written statement by an expert (whether or not an expert witness in the proceeding), if the statement complies with the following requirements:

(a) the statement sets out the expert's opinion and the facts on which the opinion is formed;

(b) the statement includes the substance of the expert's evidence that the party serving the statement intends to adduce in evidence in chief at the trial of the proceeding.

(3) However, if the expert provides 2 or more written statements for a party for the proceeding, each of the statements is an expert report if the statements, taken together, comply with subrule (2) (a) and (b).

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1203 Expert witnesses to agree to be bound by code of conduct

(1) If a party to a proceeding engages an expert witness, the party must give the expert witness a copy of the code of conduct as soon as practicable after the expert witness is engaged.

(2) An expert witness must not give oral evidence unless—

(a) the expert witness has acknowledged in writing, whether in a report relating to the proposed evidence or otherwise in relation to the proceeding, that the expert witness has read the code of conduct and agrees to be bound by it; and

(b) a copy of the acknowledgment has been served on all active parties affected by the evidence.

(3) If an expert report does not contain an acknowledgment by the expert witness who prepared the report that the expert witness has read the code of conduct and agrees to be bound by it, service of the expert report by the party who engaged the expert witness is not valid service.

(4) This rule does not apply to a doctor who has treated the plaintiff.

1204 Expert witness—immunity

An expert witness has the same protection and immunity for the contents of an expert report prepared by the expert witness that is dealt with as required by these rules as the expert witness could claim if the contents of the report were given orally at the trial of the proceeding for which the report is prepared.

1205 Court may give directions in relation to expert evidence

(1) The court may, on its own initiative or on a party's application, give 1 or more of the following directions in relation to expert evidence:

(a) a direction about the time for service of an expert report;

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(b) a direction that expert evidence—

(i) may not be adduced on an issue; or

(ii) may not be adduced on an issue without the leave of the court; or

(iii) may be adduced only in relation to a stated issue;

(c) a direction limiting the number of expert witnesses who may be called to give evidence on an issue;

(d) a direction providing for the appointment and instruction of 1 expert witness for the parties in relation to a stated issue;

(e) a direction providing for the appointment and instruction of a court-appointed expert witness in relation to a stated issue;

(f) a direction requiring an expert witness who has prepared 2 or more expert reports in relation to a proceeding to prepare a single report that reflects the witness's evidence in chief;

(g) any other direction in relation to expert evidence that the court considers appropriate.

(2) If the court gives a direction under subrule (1) (e), it may also give a direction about the payment of costs, including—

(a) the remuneration of the court-appointed expert witness; and

(b) by which party or parties, and in what proportion, the remuneration is to be paid.

(3) The court may—

(a) order a party to give security for the remuneration of the court-appointed expert witness; and

(b) order a stay of the proceeding until the security is given.

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Division 2.12.2 Multiple expert witnesses for same issue

1210 Application—div 2.12.2

This division applies if 2 or more parties to a civil proceeding call, or intend to call, expert witnesses to give opinion evidence about the same, or a similar, issue at the trial of the proceeding.

1211 Court may direct experts to meet etc

(1) The court may, on its own initiative or on a party's application, give 1 or more of the following directions:

(a) a direction that the expert witnesses meet—

(i) to identify the matters on which they agree; and

(ii) to identify the matters on which they disagree and the reasons why; and

(iii) to try to resolve any disagreement;

(b) a direction that the expert witnesses produce for the court's use a document identifying—

(i) the matters on which they agree; and

(ii) the matters on which they disagree; and

(iii) the reasons for any failure to reach agreement on any matter;

(c) a direction that—

(i) the expert witnesses give evidence at the trial after all or certain factual evidence relevant to an issue has been given; and

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(ii) each party intending to call 1 or more expert witnesses close the party's case in relation to an issue, subject only to presenting the evidence of the expert witnesses later in the trial;

(d) a direction that, after all or certain factual evidence has been given, a party who called an expert witness file and serve on each other active party an affidavit or statement by the expert witness stating—

(i) whether the expert witness adheres to any opinion given earlier; or

(ii) whether, in light of factual evidence given at the trial, the expert witness wishes to modify any opinion given earlier;

(e) a direction that—

(i) each expert witness be sworn one immediately after another; and

(ii) when giving evidence, an expert witness occupy a position in the courtroom (not necessarily in the witness box) that is appropriate to the giving of evidence;

(f) a direction that each expert witness give an oral explanation of his or her opinion, or opinions, on a question;

(g) a direction that each expert witness give his or her opinion about the opinion, or opinions, given by another expert witness;

(h) a direction that the expert witnesses be cross-examined, or re-examined, in a certain way or sequence, including, for example, by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination, or re-examination, of all the witnesses is finished;

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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(i) a direction that any expert witness giving evidence in accordance with a direction under paragraph (e) be allowed to ask questions of any other expert witness who is also giving evidence in accordance with a direction under that paragraph;

(j) any other directions about giving evidence in accordance with a direction under paragraph (e) that the court considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction or leave under this rule.

(2) This rule does not limit the directions that the court may give on its own initiative or on a party's application.

(3) If the court directs expert witnesses to meet under subrule (1) (a), it may—

(a) set the agenda; and

(b) state the matters the expert witnesses must discuss; and

(c) direct whether or not legal representatives may be present; and

(d) give directions about the form of any report to be produced to give effect to a direction under subrule (1) (b); and

(e) give any other directions it considers appropriate.

(4) If expert witnesses have met and produced a document identifying the matters on which they agree, a party affected must not adduce expert evidence inconsistent with a matter agreed unless the court gives leave for the evidence to be adduced.

Division 2.12.3 Expert reports

1240 Application—div 2.12.3

This division applies subject to any direction given by the court under rule 1205 or rule 1211.

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1241 Service of expert reports

(1) Each party must serve on each other active party to a proceeding a copy of each expert report obtained by the party in accordance with any direction made by the court.

(2) If—

(a) a party obtains an expert report after serving reports under subrule (1); and

(b) either—

(i) the report is only responding to another report served under this rule; or

(ii) the report updates another report served under this rule;

the party must serve a copy of the report on each other active party not later than 3 days after the day the party obtains the report.

(3) An expert report must not be tendered, and is not admissible, in the proceeding unless it has been served in accordance with this rule, except with—

(a) the court's leave; or

(b) the agreement of all active parties to the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(4) The court must not give leave under subrule (3) (a) unless satisfied that—

(a) there are exceptional circumstances that justify giving leave; or

(b) the expert report only updates an earlier version of an expert report that has been served in accordance with this rule.

(5) This rule applies subject to any order of the court.

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1242 Supplementary expert reports

(1) If an expert witness changes in a material way an opinion in an expert report that has been served, the expert witness must provide a supplementary expert report (a ***supplementary report***) to the party who engaged the expert witness (the ***engaging party***) stating the change and the reason for it.

(2) The expert witness may provide the engaging party with other supplementary reports (also a ***supplementary report***).

(3) If an expert witness provides a supplementary report under this rule, the engaging party, and any other party having the same interest as the engaging party, must not use an earlier expert report (including an earlier supplementary report) on an issue to which the earlier report relates unless the engaging party has served a copy of the supplementary report on all active parties on whom the engaging party served the earlier report.

1243 Expert evidence to be covered by expert report

Except with the court's leave or as otherwise agreed by all the active parties to a proceeding, the oral evidence in chief of an expert is not admissible unless an expert report served in accordance with rule 1241 (Service of expert reports) contains the substance of the matters sought to be adduced in evidence.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

1244 Expert reports admissible as evidence of opinion etc

An expert report served under rule 1241 (Service of expert reports) is admissible as evidence of—

(a) the author's opinion; and

(b) if the author's direct oral evidence of a fact on which the opinion was formed would be admissible as evidence of that fact without further evidence (whether oral or otherwise)—that fact.

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1245 Requiring attendance of expert for cross-examination etc

(1) This rule applies if an expert report is served under rule 1241 (Service of expert reports) by a party to a proceeding.

(2) Another party to the proceeding may, by notice served on the party who served the expert report, require the expert who prepared the report to attend the trial of the proceeding to be cross-examined on the report.

(3) The notice must be served at the listing hearing or no later than 49 days before the date set for the trial (whichever is the earlier).

1246 Tender of expert report

(1) A party to a proceeding who is served with an expert report under rule 1241 (Service of expert reports) may tender the report.

(2) If the expert who prepared the report is required under rule 1245 (Requiring attendance of expert for cross-examination etc) to attend the trial of the proceeding, the report may not be tendered or otherwise used in the proceeding by any party unless—

(a) the expert attends as required to be cross-examined on the report; or

(b) the expert has died; or

(c) the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) If the expert is cross-examined on the report, the party using the report may re-examine the expert.

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Part 2.13 Pre-trial procedures

1301 Application—pt 2.13

This part applies to a proceeding started by originating claim.

Note A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39).

1304 Statement of particulars before trial—personal injury claims

(1) This rule applies to a proceeding in which a claim for damages for personal injury is made, other than a claim under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

(2) The plaintiff must file, and serve on each active party to the proceeding, a statement (a ***statement of particulars***)—

(a) 14 days before the listing hearing for the proceeding; or

(b) in accordance with any direction made by the court.

(3) The statement of particulars must set out the following particulars of the plaintiff's claim:

(a) particulars of injuries received;

(b) particulars of disabilities suffered since the accident giving rise to the claim and any continuing disabilities,

(c) particulars of out-of-pocket expenses;

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(d) if a claim is made for loss of earnings—

(i) the name and address of each employer of the plaintiff for the year before the accident giving rise to the claim, together with details of the periods of employment, capacity in which the plaintiff was employed, and the plaintiff's earnings during each period of employment; and

(ii) the name and address of each employer of the plaintiff since the accident giving rise to the claim, together with details of the periods of employment, capacity in which the plaintiff was employed, and the plaintiff's earnings during each period of employment; and

(iii) the amount claimed for loss of earnings to the date of the statement of particulars worked out by comparing the plaintiff's earnings since the accident with the earnings the plaintiff claims the plaintiff would have earned had the accident not happened; and

(iv) if the plaintiff was self-employed at any time in the year before, or since, the accident—the plaintiff's earnings for the year before, and since, the accident, together with all additional particulars necessary to disclose the way the claim for loss of earning capacity is worked out;

(e) particulars of any claimed future loss of earning capacity and future economic loss;

(f) if a claim is made for domestic assistance or attendant care—particulars of the claim.

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(4) In working out for subrule (3) (d) (iii) the earnings the plaintiff claims the plaintiff would have earned had the accident not happened, the plaintiff must, if appropriate, set out—

(a) particulars of—

(i) the earnings of employees engaged in employment similar to the employment that the plaintiff claims the plaintiff would have engaged in had the accident not happened; and

(ii) the identity of those employees; or

(b) particulars of—

(i) payments that the plaintiff would have received under an award or industrial agreement applying to the employment that the plaintiff claims the plaintiff would have engaged in had the accident not happened; and

(ii) the identity of the award or agreement.

(5) The plaintiff must serve, with the statement of particulars, a copy of all documents available to the plaintiff in support of any claim for special damages or economic loss, including the following:

(a) hospital, medical or similar accounts and receipts;

(b) letters from any workers compensation insurer stating amounts paid for the plaintiff for hospital, medical, ambulance or similar expenses;

(c) a letter from the plaintiff's employer or employers immediately before the accident, giving particulars of—

(i) the dates when the plaintiff was absent from work because of the accident; and

(ii) any earnings (including overtime) lost by the plaintiff for the absences from work; and

(iii) any change in the plaintiff's classification and duties, and any earnings after the accident; and

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(iv) if the plaintiff's employment has been terminated—the date of termination and the reason for the termination;

(d) copies of the plaintiff's group certificates and income tax returns for the 2 financial years immediately before the financial year in which the accident happened, together with any income tax returns lodged by the plaintiff since the accident;

(e) if the plaintiff was self-employed at any time in the year before, or since, the accident—accountants' reports and other business records that the plaintiff intends to rely on to prove loss of earnings;

(f) reports, award rates and correspondence relied on to support any claim for domestic assistance or attendant care.

(6) If any document, or part of a document, required to be served under subrule (5) cannot be served, the plaintiff must serve, with the statement of particulars, a statement of the reasons why the document cannot be served.

(7) In this rule:

accident includes incident.

earnings means gross earnings per week or another appropriate period and net earnings after taxation per week or another appropriate period.

1305 Statement of particulars before trial—compensation to relatives in death claims

(1) This rule applies to a proceeding in which a claim for damages for personal injury is made under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

(2) The plaintiff must file, and serve on each other active party to the proceeding, in relation to each person for whose benefit the proceeding is brought, a statement (a ***statement of particulars***)—

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(a) 14 days before the listing hearing for the proceeding; or

(b) in accordance with any direction made by the court.

(3) The statement of particulars in relation to each person must set out the following particulars:

(a) the person's name, address, relationship to the deceased person the subject of the proceeding;

(b) if relevant, whether the person's dependency on the deceased person, or reliance on services provided by the deceased person, is claimed to have been total or partial, the circumstances in which the person received support or services from the deceased person, and the amount of the support or services for the year ending on the day the person died.

(4) The plaintiff must serve with the statement of particulars, in relation to each person for whose benefit the proceeding is brought, a copy of the following documents:

(a) if relevant, a copy or extract of the birth certificate of the person and, if the person has been married, a copy of the person's marriage certificate;

(b) a letter from the deceased person's employer immediately before the accident, giving details of the deceased person's earnings and prospects of promotion at the date of the person's death;

(c) copies of the deceased person's income tax returns for the 2 financial years immediately before the financial year in which the person died;

(d) copies of any bank statements, financial records or other documents on which the plaintiff intends to rely to prove the support or other benefits given to the person by the deceased person for a period of not less than 1 year ending on the day the person died;

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(e) copies of all documents, including accounts and receipts, in support of any claim for funeral expenses, medical or hospital expenses or any other expenses relating to the person's death;

(f) copies of documents proving the net value of the deceased person's estate.

(5) If any document, or part of a document, required to be served under subrule (4) cannot be served, the plaintiff must serve, with the statement of particulars, a statement of the reasons why the document cannot be served.

1311 Expedited trial

(1) A party to a proceeding may apply to the court for an expedited trial.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(2) An application for an expedited trial must be supported by an affidavit stating the following:

(a) the grounds for expediting the trial;

(b) the issues in dispute;

(c) the number of witnesses to be called and the nature of each witness's evidence;

(d) the estimated length of the trial;

(e) whether senior counsel or junior counsel is briefed in the proceeding.

(3) The affidavit may include anything else the applicant considers relevant to the application.

(4) The court may order that the trial be expedited if it is in the interests of justice to expedite the trial.

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1312 Court book

(1) If the court has set a date for the trial of a proceeding, the plaintiff must, not later than 14 days before the trial date, file, and serve on each other active party to the proceeding, a copy of the following documents bound or stapled together (the ***court book***):

(a) the originating process;

(b) each pleading in the proceeding;

Note ***Pleading*** is defined in the dictionary.

(c) any request made for further particulars of a party's pleading, and any answer to the request;

(d) any third-party notice;

Note ***Third-party notice*** includes a fourth-party notice and the notice including any other further person and so on successively (see r 322 (2) (c)).

(e) any notice claiming contribution or indemnity;

(f) any order in the proceeding to include a party;

(g) any affidavit to be used at the trial;

(h) if a statement of particulars is required to be filed under rule 1304 (Statement of particulars before trial—personal injury claims) or rule 1305 (Statement of particulars before trial—compensation to relatives in death claims)—the statement of particulars.

(2) If a document mentioned in subrule (1) has been amended, the plaintiff must include in the court book only the most recent amended version of the document.

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(3) The following documents must not be included in a court book unless all the active parties to the proceeding agree:

(a) expert reports, including medical reports;

(b) answers to interrogatories.

1325 Listing hearing

At a listing hearing for a proceeding, the court may make the directions it considers appropriate including in relation to—

(a) simplifying the issues in dispute; and

(b) limiting the number of witnesses or the issues to be covered by witness evidence; and

(c) the filing and serving of expert reports; and

(d) the filing and serving of affidavit evidence; and

(e) the admission of facts or documents to avoid unnecessary proof; and

(f) written submissions to the court on issues of law or issues of law and fact; and

(g) the estimated length of the trial; and

(h) the possibility of the proceeding being settled before the trial; and

(i) anything else that may assist the early resolution of the proceeding.

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1326 Special fixture

(1) At the listing hearing, a proceeding may be set down by the court for trial as a special fixture if—

(a) for a proceeding in the Supreme Court—a party to the proceeding or the court estimates the trial will be 5 days or longer; or

(b) for a proceeding in the Magistrates Court—a party to the proceeding or the court estimates the trial will be 3 days or longer; or

(c) the court has already ordered that the trial be expedited or listed as a special fixture.

(2) If a proceeding is set down for trial as a special fixture, the court may—

(a) allocate a judicial officer (the ***trial judicial officer***) for the trial; and

(b) set a date for a directions hearing before—

(i) the trial judicial officer; or

(ii) if the trial judicial officer is a judge who is not a resident judge—a resident judge or the associate judge (the ***nominated judicial officer***).

(3) If the court allocates a trial judicial officer for the trial, the trial judicial officer or nominated judicial officer must—

(a) hear any application in the proceeding or application for directions in the proceeding before the trial; and

(b) monitor compliance with any directions given in the proceeding.

Note ***Application*** in a proceeding is defined in r 6006.

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1327 Directions hearings and listing hearings—costs

Unless the court otherwise orders, costs incurred by a party to a proceeding in relation to a directions hearing or listing hearing are costs in the cause.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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Part 2.14 Court supervision

Division 2.14.1 Directions

1400 Directions—application

(1) A party to a proceeding may, at any time, apply to the court for directions about the conduct of the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(2) A party to a proceeding may apply for directions either on an application for directions or on an application for other relief.

1401 Directions generally

(1) The court may, at any stage of a proceeding, give any direction about the conduct of the proceeding it considers appropriate, even though the direction may be inconsistent with another provision of these rules.

(2) The court may give a direction about the conduct of the proceeding on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(3) In deciding whether to give a direction under this rule, the interests of justice are paramount.

(4) Without limiting subrule (1), the court may, at any time, do any of the following in relation to a hearing of a proceeding:

(a) require copies of pleadings for use by the court before the hearing;

(b) require the parties to define, in writing, the issues for decision by the court;

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(c) set a timetable for the conduct of the hearing or any steps in the proceeding;

(d) limit the time to be taken by the hearing;

(e) limit the time to be taken by a party in presenting the party's case;

(f) require Scott schedules to be filed;

(g) require evidence to be given by affidavit, orally or in some other form;

(h) require the service or exchange of expert reports and the holding of conferences of experts;

(i) limit the number of witnesses (including expert witnesses) a party may call on a particular issue;

(j) limit the time to be taken in examining, cross-examining or re-examining a witness;

(k) require the use of telephone or video conference facilities, videotapes, film projection, computer and other equipment and technology;

(l) require submissions to be made in the way the court directs, for example, in writing, orally, or by a combination of written and oral submission;

(m) limit the time to be taken in making an oral submission;

(n) limit the length of a written submission or affidavit;

(o) require the parties, before the hearing, to provide statements of witnesses the parties intend to call;

(p) refer the proceeding to another judicial officer for further directions;

(q) order that a counterclaim be heard separately from the hearing for the proceeding in which the counterclaim is made;

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(r) order that the issues between the defendant who included a third party and the third party be heard separately from the issues between the plaintiff and the defendant;

(s) give directions about the order of evidence and addresses and the conduct of the trial generally;

(t) give any other direction the court considers appropriate.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) In addition to the principle mentioned in subrule (3), in deciding whether to give a direction of a kind mentioned in subrule (4), the court may have regard to the following matters:

(a) that each party is entitled to a fair hearing;

(b) that the time allowed for taking a step in the proceeding or for the hearing must be reasonable;

(c) the complexity or simplicity of the case;

(d) the importance of the issues and the case as a whole;

(e) the volume and character of the evidence to be led;

(f) the time expected to be taken by the hearing;

(g) the number of witnesses to be called by the parties;

(h) that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;

(i) the state of the court lists;

(j) any other relevant matter.

(6) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.

(7) The court may at any time amend or revoke a direction made under this rule.

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(8) The court may amend or revoke a direction made under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction.

(9) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

1402 Proceeding already being managed by court

(1) If, under these rules, a particular judicial officer has been allocated to manage a proceeding—

(a) the court may direct that all applications in relation to the proceeding, or the hearing of the proceeding, be heard and decided by the judicial officer; and

(b) the judicial officer may monitor the proceeding to ensure that the parties comply with any directions given in the proceeding.

(2) The court may make a direction under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction under this rule.

(3) If, under these rules, a proceeding has been assigned to the docket of a judge or the associate judge, the judge or associate judge assigned the proceeding—

(a) must hear the proceeding and any application in relation to the proceeding, unless the court otherwise orders; and

(b) may monitor the proceeding to ensure that the parties comply with any directions given in the proceeding.

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1403 Decision in proceeding

If the parties agree, the court may hear and decide a proceeding on an application for directions.

1404 Failure to comply with direction etc

(1) This rule applies if a party—

(a) after receiving notice of a directions or listing hearing, in a proceeding, does not attend the hearing; or

(b) fails to comply with a direction about the conduct of a proceeding.

(2) The court may do any of the following:

(a) give the further directions it considers appropriate;

(b) dismiss the application or proceeding;

(c) make an order for costs for or against a party;

(d) adjourn the application or hearing;

(e) make another order dealing with the proceeding it considers appropriate.

(3) Without limiting subrule (2), the court may consider, and give directions in relation to, the following matters at a directions hearing:

(a) requests for particulars;

(b) filing further pleadings;

(c) amending pleadings;

(d) challenges to any pleading;

(e) discovery, either in full or limited to particular issues;

(f) interrogatories;

(g) alternative dispute resolution, including mediation;

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(h) statements of agreed facts;

(i) evidence by affidavit;

(j) service or exchange of expert reports.

Note The court has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

(4) The court may act under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(5) In deciding whether to dismiss the application or proceeding, the court must have regard to the principle that the interests of justice are paramount.

Division 2.14.1A Transfer of proceedings between courts

1430 Transfer of proceeding from Supreme Court to Magistrates Court—application

(1) The Supreme Court may, on application by a party to a proceeding started in the Supreme Court or its own initiative, order that the proceeding be transferred to the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The Court may make an order under subsection (1) only if satisfied that—

(a) the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) is not more than the amount for which the Magistrates Court has jurisdiction to decide; and

(b) the proceeding could properly have been started in the Magistrates Court; and

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(c) the Court considers it just to do so.

1431 Transfer of proceeding from Supreme Court to Magistrates Court—procedure

(1) This rule applies if the Supreme Court orders under rule 1430 that a proceeding be transferred to the Magistrates Court.

(2) A party to the proceeding may file in the Magistrates Court a copy of—

(a) the order; and

(b) each of the pleadings in the proceeding; and

(c) any other relevant documents filed in the Supreme Court.

(3) When the documents mentioned in subrule (2) are filed, the proceeding—

(a) stops being a proceeding in the Supreme Court; and

(b) becomes a proceeding in the Magistrates Court.

(4) The proceeding is taken to have been started in the Magistrates Court on the day the proceeding was started in the Supreme Court.

(5) Costs in the proceeding are to be allowed—

(a) for costs incurred before the order under rule 1430 is made (including the costs of getting the order) and the costs of getting the copies mentioned in subrule (2)—

(i) if the Court makes an order in relation to the costs—in accordance with the order; or

(ii) in any other case—at the prescribed scale of costs; and

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(b) for costs incurred after the order is made (not including the costs of getting the copies mentioned in subrule (2))—in accordance with rule 1722 (Costs—solicitors' costs generally) as if the proceeding were a proceeding in the Magistrates Court immediately after the order is made.

1432 Transfer of proceeding from Magistrates Court to Supreme Court—application

(1) The Supreme Court may, on application by a party to a proceeding started in the Magistrates Court, order that the proceeding be transferred to the Supreme Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The Court may make an order under subsection (1) on the conditions about costs, security for the amount claimed for costs, or otherwise, that the Court considers just.

1433 Transfer of proceeding from Magistrates Court to Supreme Court—stay of proceeding

(1) This rule applies to an application under rule 1432.

(2) The Supreme Court may, on application by a party to the proceeding, order that the proceeding be stayed until the application is decided or the Court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) An order under this rule takes effect immediately on filing a copy of the order in the Magistrates Court.

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Division 2.14.1B Removal of applications from ACAT to Supreme Court

1440 Removal of applications from ACAT to Supreme Court—application

This division applies if—

(a) an application is made to the ACAT; and

(b) the ACAT orders that the application be removed to the Supreme Court under the *ACT Civil and Administrative Tribunal Act 2008*, section 83.

1441 Removal of applications from ACAT to Supreme Court—procedure

(1) The ACAT must, within 14 days after the order is made, file in the Supreme Court a copy of—

(a) the application; and

(b) the order removing the application to the court.

(2) When the documents mentioned in subrule (1) are filed—

(a) the court must set a date for a directions hearing; and

(b) the registrar must tell the parties the date set for the directions hearing.

(3) The application is taken to be an originating application started in the Supreme Court on the day the application was started in the ACAT.

(4) The respondent to the application must file a notice of intention to respond within 14 days after the ACAT orders the removal.

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Division 2.14.2 Failure to comply with rules or order

1450 Effect of failure to comply with rules

(1) A failure to comply with these rules in relation to a proceeding is an irregularity and does not make the proceeding, or a document, step taken or order made in the proceeding, void.

(2) If there has been a failure to comply with these rules in relation to a proceeding, the court may—

(a) set aside all or part of the proceeding; or

(b) set aside a step taken or order made in the proceeding; or

(c) declare a document or step taken to be void; or

(d) declare a document or step taken to be valid; or

(e) make another order that could be made under these rules (including an order dealing with the proceeding generally); or

(f) make any order dealing with the proceeding generally that it considers appropriate.

(3) However, the court must not—

(a) set aside a proceeding only because the proceeding was started by the incorrect originating process; or

(b) set aside an originating process only because the incorrect originating process was used.

(4) The court may act under subrule (2) on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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1451 Application because of failure to comply with rules

(1) An application for an order under rule 1450 must be made—

(a) within a reasonable time; and

(b) before the applicant has taken any fresh step in the proceeding after becoming aware of the failure to comply with these rules.

(2) The application must set out details of the failure to comply with these rules.

1452 Failure to comply with order to take step

(1) This rule applies if a party (the ***defaulting party***) does not comply with an order to take a step in a proceeding in the court.

(2) A party who is entitled to the benefit of the order may apply to the court for an order under this rule against the defaulting party.

Note Pt 6.2 (Applications in proceedings) applies to the an application for an order or leave under this rule.

(3) The application—

(a) must set out the grounds on which it is based; and

(b) is evidence of the grounds stated in the application.

(4) On the hearing of the application, the court may—

(a) give judgment against the defaulting party; or

(b) extend time to comply with the order that has not been complied with; or

(c) give directions; or

(d) make any other order.

(5) The party who makes the application may reply to any material filed by the defaulting party.

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(6) The application may be withdrawn with the agreement of all parties concerned in the application or with the court's leave.

(7) A judgment given under subrule (4) (a) may be set aside—

(a) if the application was made without being served on the defaulting party, or the court is satisfied the defaulting party was not present at the hearing of the application for good reason—on an application to set the judgment aside; or

(b) otherwise—only on appeal.

(8) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(9) This rule does not limit the powers of the court to punish for contempt of court.

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Part 2.15 Trial

Division 2.15.1 Interpretation—pt 2.15

1500 Meaning of *question*—pt 2.15

In this part:

question includes a question or issue in a proceeding, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties or otherwise.

Division 2.15.2 Proceedings at trial

1505 Trial—defendant or plaintiff not appearing

(1) If a defendant does not appear when the trial starts, the plaintiff may call evidence to establish an entitlement to judgment against the defendant in the way the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions or an order under this rule.

(2) If the plaintiff does not appear when the trial starts, the court may dismiss the plaintiff's originating process and the defendant may call evidence to establish an entitlement to judgment under a counterclaim against the plaintiff, in the way the court directs.

(3) Despite subrule (2), the defendant may submit to judgment if the plaintiff does not appear when the trial starts.

(4) If neither the plaintiff nor the defendant appear when the trial starts, the court may, on its own initiative, order that the proceeding (including any counterclaim by the defendant) be dismissed and make no order for costs.

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(5) On application made not later than 7 days after the day judgment is entered because of this rule, the court may amend or set aside the judgment.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

1506 Trial—adjournment etc

On application by a party or on its own initiative, the court may adjourn or postpone a trial at or before the trial.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

1507 Trial—third-party proceeding

A third-party proceeding may be tried in the same way as the proceeding between the plaintiff and the defendant.

1508 Order of evidence and addresses

(1) This rule applies—

(a) subject to any directions by the court about the order of evidence and addresses and the conduct of the trial generally; and

(b) if there are more than 2 parties to the proceeding or a counterclaim in the proceeding—to the proceeding with necessary changes.

Note The court has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

(2) If the plaintiff has the burden of proof on any issue, the plaintiff's case is presented first.

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(3) If the defendant has the burden of proof on every issue, the defendant's case is presented first.

(4) The party whose case is presented first (the ***first party***) may make an address opening the first party's case and may then present evidence in support of the case.

(5) If, during the presentation of the first party's case, no document or thing is admitted in evidence or by tender by the other party, and the other party does not present any evidence in support of the other party's case, the first party may make a closing address and the other party may then make a closing address.

(6) If, during the presentation of the first party's case, a document or thing is admitted in evidence or by tender by the other party, but the other party does not present any evidence in support of the other party's case, the other party may make a closing address and the first party may then make a closing address.

(7) If the other party presents evidence—

(a) the other party may make an opening address and, after the other party's evidence is presented, may make a closing address; and

(b) after the other party has made a closing address, the first party may make a closing address.

1509 View by court

On application by a party or on its own initiative, the court may inspect a place, process or thing, and witness any demonstration about which an issue arises in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

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1510 Associate etc to record hearing times

(1) This rule applies only in relation to the Supreme Court.

(2) The judicial officer's associate or other officer present at a hearing of a proceeding must, on each day of the hearing, record the times when the hearing starts and ends.

(3) If the costs of a party to the proceeding are to be assessed, the recorded times must be provided to the registrar for the assessment.

1511 Associate to enter findings etc

(1) This rule applies only in relation to the Supreme Court.

(2) The judicial officer's associate must, as directed by the judicial officer, record—

(a) the orders made by the judicial officer about judgment; and

(b) the certificates (if any) given by the judicial officer; and

(c) anything else directed by the judicial officer.

Division 2.15.3 Separate decisions on questions

1520 Application—div 2.15.3

(1) This division applies to any question for decision of the court from a proceeding in the court.

(2) However, this division does not apply to—

(a) a question for decision of the Supreme Court from a proceeding in another court or a tribunal; or

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(b) a case stated or question reserved by the Supreme Court to the Court of Appeal.

Note 1 Div 5.7.1 (Questions referred—Supreme Court) deals with questions for decision of the Supreme Court from a proceeding in another court or a tribunal.

Note 2 Div 5.7.2 (Questions referred—Court of Appeal) deals with a case stated or question reserved by the Supreme Court for decision by the Court of Appeal.

1521 Separate decisions on questions—order

(1) The court may make an order for the decision by the court of a question separately from another question, whether before, at, or after the trial or continuation of the trial of the proceeding.

(2) The court may make an order under subrule (1) on application by a party to a proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) Unless the court otherwise orders, a separate question or questions must—

(a) set out the question or questions to be decided; and

(b) be divided into paragraphs numbered consecutively; and

(c) be prepared in draft by the initiating party for the proceeding after consultation with each other active party; and

(d) be settled by the registrar; and

(e) be filed.

(4) In this rule:

initiating party means—

(a) if the order under subrule (1) was made on the application of a party—that party; or

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(b) if the order under subrule (1) was made by the court on its own initiative—the party nominated by the court.

1522 Separate decisions on questions—directions

On the filing of the question—

(a) the court must set a date for a directions hearing; and

(b) the registrar must tell the parties the date set for the directions hearing.

1523 Separate decisions on questions—decision

(1) If a question is decided under this division, the court may make the order, grant the relief and give the directions that the nature of the case requires.

(2) The court may, in relation to a decision of a question under this division, as the nature of the case requires—

(a) dismiss the proceeding or all or part of a claim for relief in the proceeding; or

(b) give judgment, including a declaratory judgment; or

(c) make another order.

Division 2.15.4 Assessors and court-appointed referees

1530 Assessors

(1) The court may sit with 1 or more assessors.

(2) A trial with assessors may be conducted as the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions under this rule.

(3) Assessors may be appointed as the court directs.

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(4) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

1531 Referee—referral of question etc

(1) The court may, at any stage of a proceeding—

(a) refer a question to a referee for the referee to give an opinion on, or hear and decide, the question; or

(b) refer the proceeding to a referee for the referee to give an opinion on, or hear and decide, the proceeding.

(2) The court may make an order on application by a party to the proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or directions under this rule.

(3) If the court makes an order under subrule (1), it may give directions about the conduct of the reference.

(4) Directions may be given in the reference or from time to time on application by a party or on the court's own initiative.

1532 Referee—appointment

(1) The court may appoint a referee for a reference.

Note Pt 6.2 (Applications in proceedings) applies to an application for an appointment.

(2) A referee may be—

(a) a judicial officer or other officer of the court; or

(b) anyone else—

(i) agreed by the parties; or

(ii) named by the court; or

(iii) named by a person nominated by the court to select a suitable referee.

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(3) A judicial officer or other officer of the Supreme Court may only be appointed with the agreement of the Chief Justice.

(4) A judicial officer or other officer of the Magistrates Court may only be appointed with the agreement of the Chief Magistrate.

(5) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

1533 Referee—amendment of order referring question etc

(1) The court may amend or set aside an order made under rule 1531 (Referee—referral of question etc).

(2) The court may amend or set aside the order—

(a) on application by the referee or a party to the proceeding under the reference; or

(b) on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) This rule does not affect any other power of the court to amend or set aside an order made under rule 1531.

1534 Referee—conduct under reference

(1) A question or proceeding referred to a referee under rule 1531 must be conducted as if—

(a) the reference were an arbitration agreement under the *Commercial Arbitration Act 2017*; and

(b) the referee were an arbitral tribunal under that Act.

(2) However, each party to the proceeding must, within a time set by the referee but before the referee has finished hearing evidence, give the referee and each other active party a brief statement of the findings of fact and law that the party says the referee should make.

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(3) This rule is subject to—

(a) any directions given by the court under rule 1531 for the reference; and

(b) rule 1535.

1535 Referee—submission of question to court

(1) A referee may submit for the decision of the court a question that arises in the course of the question or proceeding referred to the referee under rule 1531.

(2) The registrar must give a copy of the question to each active party at least 7 days before the day the question is considered by the court.

(3) A party to the proceeding may file written submissions about the question not later than 7 days after the day the party is given a copy of the question.

(4) The court must set a date for a hearing to consider the question.

(5) The registrar must tell the active parties the date set for the hearing.

(6) After considering any submissions made by the parties, the court must decide the question and may give the referee directions it considers appropriate.

(7) The referee must comply with the decision of the court given on the question or proceeding.

1536 Referee—report

(1) Unless the court otherwise orders, a referee must file a written report on the question or proceeding referred to the referee.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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(2) The report must—

(a) give the referee's opinion or decision on the question or proceeding referred; and

(b) give reasons for the opinion or decision; and

(c) have attached to it the statements given to the referee by the parties under rule 1534 (2).

(3) The registrar must give a copy of the report to each active party.

1537 Referee—proceeding on report

(1) This rule applies if a referee's report has been filed in the court in a proceeding.

(2) On application by a party, the court may, on a matter of fact or law or both—

(a) accept, amend or reject all or part of the report; or

(b) require the referee to give an explanation by further report; or

(c) on any ground, remit for further consideration and report by the referee all or part of the question or proceeding referred to the referee; or

(d) make an order in the proceeding on the evidence taken before the referee, with or without additional evidence.

Note 1 ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application under this subrule or for leave under this rule.

(3) A party applying for an order under subrule (2) (d) must give at least 7 days notice of the party's intention to apply for the order to all other active parties.

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(4) Evidence additional to the evidence taken before the referee must not be given before the court on the question or proceeding referred to the referee unless the court gives leave.

1538 Assessor and referee—remuneration

(1) The court may decide, either in the first instance or finally—

(a) the remuneration of a referee or assessor; and

(b) by which party or parties, and in what proportion, the remuneration is to be paid.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court may—

(a) order a party to give security for the remuneration of a referee or assessor; and

(b) order a stay of the proceeding until the security is given.

Division 2.15.5 Assessment of damages

1545 Application—div 2.15.5

This division applies subject to any order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

1546 Assessment of damages

(1) An assessment of damages must be conducted as nearly as possible in the same way as a trial.

(2) This rule is subject to rule 1547.

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1547 Assessment of damages—use of affidavit evidence

(1) This rule applies to a proceeding in the Magistrates Court if judgment has been entered for the plaintiff against the defendant for damages to be assessed.

(2) Evidence may be given by affidavit on the assessment of damages in relation to—

(a) the identity of a motor vehicle; or

(b) the damage sustained by a motor vehicle in a particular collision; or

(c) the reasonable cost of repairing the damage sustained by a motor vehicle in the particular collision; or

(d) anything else prescribed by practice note.

1548 Partial judgment for damages to be assessed

(1) This rule applies if—

(a) a judgment (including a default judgment) is given for damages (including the value of goods) to be assessed; and

(b) the proceeding is carried on in relation to a claim for relief not decided by the judgment.

(2) The court must assess the damages at the trial of the other claim for relief.

1549 Damages to time of assessment

(1) This rule applies if damages, including interest, may be assessed and—

(a) continuing damages are likely to happen; or

(b) there are—

(i) repeated breaches of recurring obligations; or

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(ii) intermittent breaches of a continuing obligation.

(2) The damages must be assessed for the period up to the time of assessment, including damages for breaches happening after the proceeding started.

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Part 2.16 Judgments and other orders

1600 Orders—required by nature of case

(1) On the application of a party to a proceeding, the court may, at any stage of the proceeding, make any order that the nature of the case requires.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

(2) The court may make the order even if there is no claim for relief extending to the order in the originating process, statement of claim, counterclaim or similar document.

1601 Judgment book

(1) The registrar of the Supreme Court must keep a judgment book.

(2) The judgment book may be kept in electronic form.

(3) The registrar must record in the judgment book—

(a) the distinguishing number or other unique identifier given to the proceeding for which a judgment is entered under rule 71 (Numbering etc of proceedings); and

(b) the judgment in the proceeding; and

(c) the date the judgment was entered; and

(d) the other information the court directs.

(4) The registrar may record any other information in the judgment book.

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1602 Judgments—several claims

(1) This rule applies if—

(a) there is a claim by a plaintiff in a proceeding and a counterclaim by a defendant in the proceeding; or

(b) there are several claims between the parties to a proceeding.

(2) The court may give judgment—

(a) for the balance only of the amounts awarded on the respective claims between 2 or more parties; or

(b) in relation to each claim.

1603 Orders—set off between enforceable money orders

(1) This rule applies if, in relation to 2 or more money orders of the same court, the enforcement creditor and the enforcement debtor under 1 or more of the orders are the enforcement debtor and enforcement creditor, respectively, under the other orders.

Note ***Enforceable money order***, ***enforcement creditor*** and ***enforcement debtor*** are defined in r 2000 (Definitions—pt 2.18).

(2) The enforcement debtor under an enforceable money order made in a proceeding (the ***first order***) may apply to the court for an order in the proceeding that the first order be set off against another enforceable money order of the same court (the ***second order***) in which the enforcement debtor is the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If the court makes an order under this rule—

(a) if the amount of the first order is less than the amount of the second order—the first order is taken to have been satisfied and the amount of the second order is taken to have been reduced by the amount of the first order; or

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(b) if the amount of the first order is equal to the amount of the second order—both orders are taken to have been satisfied; or

(c) if the amount of the first order is greater than the amount of the second order—the second order is taken to have been satisfied and the amount of the first order is taken to have been reduced by the amount of the second order.

1604 Judgments—detention of goods

(1) This rule applies to a proceeding in relation to the detention of goods.

(2) The court may give judgment for the plaintiff against the defendant, in accordance with the plaintiff's claim for relief, for either—

(a) the return of the goods to the plaintiff, or the retention of the goods by the defendant and payment to the plaintiff of the value of the goods; or

(b) payment to the plaintiff of the value of the goods.

(3) If the court gives judgment for the return of goods, it may state a date before which the return must take place.

(4) If the court gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the plaintiff's application, order the defendant to pay the value of the goods to the plaintiff.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) If the court gives judgment under subrule (2) (a), and the plaintiff subsequently applies for an order under this subrule, the court may make an order for the return of the goods to the plaintiff without the option of the defendant retaining the goods and paying their value.

(6) In this rule:

value, of the goods, means the value assessed by, or in accordance with the directions of, the court.

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1605 Orders—making and effect

(1) An order of the court is made by the order—

(a) being pronounced in court by the judicial officer making the order; or

(b) being recorded, in accordance with the court's practice, as having been entered.

Note ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

(2) An order takes effect on the day that the order is made.

(3) However, the court may order that the order takes effect on an earlier or later date or at any earlier or later time.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under r (3).

1605A Orders—shortened form

If an order of the court is expressed to be the usual order or is otherwise in shortened form, the full terms of the order must be included when the order is entered or filed in the proceeding.

Examples

1 Rule 732 (Division 2.9.4 order—damages and undertaking as to damages) requires the usual undertaking as to damages to be given.

2 Rule 1622 (Interest after judgment—usual order as to interest) provides for the usual order as to interest.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1606 Orders—filing

(1) If a judicial officer or associate writes the date and terms of an order on a court file or document on a court file, then, unless the order is filed in the court, the writing is sufficient proof of the making of the order, its date and terms.

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(2) An order of the court is filed in the court if a document embodying the order, and the date the order was made, is drawn up, settled and signed by the registrar, and filed in the court.

(3) The party in whose favour an order is made may, not later than 7 days after the day the order is made, file in the court a draft order for settling by the registrar.

Note See

- approved form 2.41 (General form of judgment—civil proceeding) AF2015-30
- approved form 2.42 (General form of order—civil proceeding) AF2015-31.

(4) If a draft order is not filed in accordance with subrule (3), another party to the proceeding may file in the court a draft order for settling by the registrar.

(5) If a draft order is filed in the court under this rule, the registrar—

(a) may approve the draft with or without amendment; and

(b) must enter the order on the filing of the final order in accordance with the approved draft.

(6) An order must be filed in the court if—

(a) the order is a judgment or other final order; or

(b) the court directs it to be filed; or

(c) a party asks for it to be filed.

(7) Unless an order is filed in the court—

(a) the order may not be enforced under part 2.18 (Enforcement) or by other process; and

(b) an appeal may not be brought against the order without the leave of the court to which the appeal would be made.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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(8) However—

(a) an order appropriate on default of an earlier order may be made without the earlier order being filed in the court; and

(b) costs payable under an order may be assessed without the order being filed in the court.

1607 Orders—certified duplicate

(1) Unless the court otherwise orders on its own initiative, the registrar must, on request, give a person a sealed copy of an order entered in a proceeding.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

(2) However, the registrar must not give a copy of the order to a person who is not a party to the proceeding unless the person appears to the registrar to have a sufficient interest in the order.

(3) If a rule, order or practice of the court requires the production or service of a judgment or other order, it is sufficient to produce or serve the sealed copy of the order.

1608 Orders—reasons

(1) If the court makes an order, and its reasons for the order are put in writing, the court may make the order orally without stating the reasons.

(2) The reasons of the court for making any order in a proceeding may, if in writing, be published—

(a) by the reasons being delivered in court to a judicial officer's associate or court officer for a copy to be given to each party; or

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(b) by a copy of the reasons signed by the judicial officer making the order being given to an appropriate officer of the court to deliver in court and a copy being given to each party.

Note ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

(3) The reasons of a court for a proposed order may be published before the order is made.

1609 Orders—reservation of decision

(1) At the end of a hearing in a proceeding, the judicial officer may reserve the decision on any question of fact or law, and may deliver the decision on another date or a date to be set.

(2) If a judicial officer reserves a decision in a proceeding, the judicial officer may arrange for written reasons for the decision to be prepared setting out the proposed order, sign them and send them to another judicial officer for delivery.

(3) The other judicial officer must, at a convenient time, publish in court the reasons for the decision.

(4) The publication by the other judicial officer has the same effect as if, at the time of publication, the judicial officer who reserved the decision had been present in court and made the order proposed in the written reasons, and published the reasons in person.

1610 Orders—time for compliance

(1) An order in a proceeding requiring a person to perform an act must state the time within which the person is required to perform the act.

(2) If an order in a proceeding requires a person to perform an act immediately or immediately on the happening of a stated event or to perform an act but does not state a time for the performance, the court may, by order, state a time within which the person must perform the act.

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Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) An order requiring a person to perform an act must have written on it or attached to it the following statement or a statement to the same effect:

> 'If you, [state name of person required to perform act], do not obey this order within the time stated in it, a court proceeding may be taken to compel you to obey it.'

(4) The court may amend a time stated in an order for the performance of an act.

1611 Orders—by consent

(1) The registrar may make an order in a proceeding if—

(a) the parties affected by the order consent to the order; and

(b) the registrar considers it appropriate.

Note ***Order*** is defined in the dictionary to include a judgment, direction or decision of the court (see also def ***made***).

(2) A party affected by the order may file a draft order for settling by the registrar.

Note See

- approved form 2.43 (General form of consent judgment) AF2007-62
- approved form 2.44 (General form of consent order) AF2006-289.

(3) The draft order must include a statement signed by the parties affected by the order that the parties consent to the order.

(4) If a draft order is filed under this rule, the registrar—

(a) may approve the draft with or without amendment; and

(b) must enter the order on the filing of the final order in accordance with the approved draft.

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(5) An order made under this rule has effect as if it had been made by the court on the day it is entered under this rule.

1612 Orders—by consent in proceeding

(1) This rule applies to an order in a proceeding for judgment by consent.

(2) If a party is represented by a legal practitioner in the proceeding, the party's consent to the order must be given by the party's practitioner.

(3) If a party acts in person in the proceeding, the party's consent to the order must be given—

(a) in person to the judicial officer hearing the proceeding; or

(b) in writing, witnessed by a legal practitioner.

(4) However, a party who is a legal practitioner complies with subrule (3) (b) if the consent is in writing.

1613 Orders—setting aside etc

(1) The court may amend or set aside an order before the filing of the order.

Note 1 ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court may set aside an order at any time if—

(a) the order was made in the absence of a party; or

(b) the order was obtained by fraud; or

(c) the order is for an injunction or the appointment of a receiver; or

(d) the order does not reflect the court's intention at the time the order was made; or

(e) the party who has the benefit of the order consents; or

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(f) for a judgment for specific performance, the court considers it appropriate for reasons that have arisen since the order was made.

(3) If the court sets aside an order, it may also set aside any order made to enforce the order.

(4) If the court sets aside an order under subrule (3), the setting aside of the order does not affect the title to any property sold under the order before it is set aside.

(5) This rule does not apply to a default judgment.

Note See r 1128 (Default judgment—setting aside etc) in relation to setting aside a default judgment.

1614 Order dismissing proceeding—effect

(1) This rule applies to the dismissal of—

(a) a proceeding, either generally or in relation to any cause of action; or

(b) a claim, or any part of a claim, for relief in a proceeding.

(2) Subject to the order for dismissal, the dismissal does not prevent the plaintiff in the proceeding from starting a fresh proceeding or claiming the same relief in a fresh proceeding.

(3) However, if the dismissal follows a decision on the merits, the plaintiff must not claim any relief in relation to the same cause of action in any subsequent proceeding in a court.

1615 Orders—joint liability

(1) This rule applies if—

(a) 2 or more people are jointly liable in relation to a cause of action in a proceeding; and

(b) 1 or more, but not all, of the people jointly liable are served with the originating process.

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(2) The court may enter judgment in relation to the cause of action against any 1 or more of the people served with the originating process, and the judgment may be enforced against anyone against whom judgment is entered.

(3) If judgment is entered in relation to the cause of action against 1 or more, but not all, of the people jointly liable in relation to the cause of action—

(a) the liability of the people jointly liable against whom judgment is not entered (the ***other people***) is not discharged by the judgment or any enforcement of the judgment; and

(b) the people against whom judgment is entered (the ***judgment parties***) and the other people are, as between the judgment parties on the one hand and the other people on the other hand, liable severally but not jointly; and

(c) if there are 2 or more other people—the other people are jointly liable as between themselves; and

(d) if the judgment is satisfied or partly satisfied—the liability of the other people is discharged to the extent to which the judgment is satisfied.

(4) Subrule (3) does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.

(5) This rule does not apply to a proceeding to which the *Civil Law (Wrongs) Act 2002*, section 107F (Proportionate liability for apportionable claims) applies.

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1616 Payment into court—payment of amount paid into court under order

An amount paid into court under an order of the court may be paid out of court only under an order of the court.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An order of the court includes a consent order (see r 1611 (Orders—by consent)).

1617 Payment into court—amount recovered by person with legal disability

(1) An amount (including an amount of damages) recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person with a legal disability must be paid into court.

(2) The amount may be paid out of court only under an order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) In this rule:

order of the court does not include a consent order.

1618 Person with legal disability—orders about recovered amounts etc

(1) The court may make an order directing how an amount recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person with a legal disability (the ***claimant***) must be dealt with.

Note An amount ordered to be paid to a person with a legal disability must be paid into court and, unless the court otherwise directs, be paid out to the public trustee and guardian (see *Public Trustee and Guardian Act 1985*, s 25).

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(2) Without limiting subrule (1), the court may, by order, direct—

(a) the payment of all or part of the amount to—

(i) the claimant or the claimant's litigation guardian for—

(A) expenses incurred by or paid for the claimant; or

(B) the maintenance or benefit of the claimant; or

(ii) the claimant's solicitor for costs; or

(b) the investment of all or part of the amount for the claimant in the way stated in the order; or

(c) the investment of all or part of the interest received from an investment under this rule for the claimant in the way stated in the order; or

(d) the changing of an investment made for the claimant under this rule; or

(e) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or

(f) the payment of all or part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), for the claimant.

(3) In this rule:

amount includes an amount of damages.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

1618A Person with mental disability—payment out to public trustee and guardian

(1) This rule applies if—

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(a) an amount is paid into court under rule 1617 in relation to a person with a mental disability (the ***claimant***); and

(b) the amount is to be paid out of court to the public trustee and guardian under the *Public Trustee and Guardian Act 1985*, section 25 (Payment of money etc to public trustee and guardian on behalf of person under disability).

(2) The court must—

(a) note that the claimant is a person with a mental disability; and

(b) direct the claimant's solicitor to serve a copy of the principal affidavit and medical documents filed in the proceeding on the public trustee and guardian.

1619 Interest up to judgment

(1) In a proceeding for the recovery of money, including a debt or damages or the value of goods, the court may—

(a) order that interest be included in the amount for which judgment is given—

(i) at the rate it considers appropriate; and

(ii) on all or any part of the money; and

(iii) for all or any part of the period beginning on the day the cause of action arose and ending on the day before the day judgment is entered; or

(b) order that a lump sum be included in the amount for which judgment is given instead of interest under paragraph (a).

(2) However, the court must not order that interest be included, or that an amount be included in a lump sum instead of interest, for—

(a) compensation in relation to liabilities incurred that do not carry interest as against the person claiming interest or claiming a lump sum instead of interest; or

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(b) compensation for loss or damage to be incurred or suffered after the day judgment is given; or

(c) exemplary or punitive damages.

(3) Subrule (4) applies if—

(a) a proceeding is started for a debt or liquidated demand; and

(b) payment of all or part of the debt or liquidated demand is made during the proceeding and before or without judgment being entered in relation to the debt or liquidated demand.

(4) On application by a party to the proceeding, the court may order that interest be paid—

(a) at the rate it considers appropriate on all or part of the amount paid; and

(b) for all or any part of the period between the day the cause of action arose and the day of the payment.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(5) For subrule (1) (a), the court may set the rate of interest—

(a) in accordance with the rate stated in the claim for relief; or

(b) having regard to the rate of interest applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

(6) This rule does not—

(a) authorise the giving of interest on interest awarded under this rule; and

(b) apply in relation to any debt on which interest is payable as of right, whether by agreement or otherwise; and

(c) affect damages recoverable for the dishonour of a bill of exchange.

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(7) In a proceeding for damages, the court must not order the payment of interest under this rule in relation to a period after the defendant offers (or first offers) an appropriate settlement amount to the plaintiff unless the special circumstances of the case justify the making of the order.

(8) For subrule (7), if an amount is offered in settlement of the proceeding and the amount for which judgment is entered in the proceeding (including interest until the day of the offer) does not exceed the amount offered in settlement by more than 10%, the amount offered is an ***appropriate settlement amount***.

1620 Interest after judgment

(1) Unless the court otherwise orders, interest is payable on the amount of a judgment debt (other than costs) that is unpaid at any time—

(a) if the court has entered judgment for an amount of interest under rule 1120 (2) (a) (Default judgment—debt or liquidated demand) worked out in accordance with the rate stated in the plaintiff's claim for relief—at the rate stated in the plaintiff's claim for relief; or

(b) in any other case—at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) However, unless the court otherwise orders, interest is not payable on the amount of the judgment debt if the amount is paid in full not later than 28 days after the day the judgment takes effect.

(3) Interest is payable on any amount awarded for costs, unless the court otherwise orders.

(4) Unless the court otherwise orders, interest is payable on an amount awarded for costs that is unpaid at any time—

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(a) at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment); and

(b) from the day the costs were assessed or another date decided by the court.

(5) This rule does not authorise the giving of interest on interest payable under this rule.

1621 Judgment for interest only

(1) This rule applies if—

(a) the defendant in a proceeding satisfies the plaintiff's claim after the proceeding is started; and

(b) the plaintiff would be entitled to judgment on the claim if the defendant had not satisfied the claim.

(2) The plaintiff is entitled to judgment for interest in relation to the amount claimed in accordance with rule 1619 (Interest up to judgment).

1622 Interest after judgment—usual order as to interest

(1) This rule applies if the court order in relation to a judgment debt or costs awarded is expressed to be the usual order as to interest.

(2) Subject to this rule, interest is payable on the amount of the judgment debt, and on any costs awarded, at the rate that applies, from time to time, under rule 1620.

(3) Interest is not payable on the amount of the judgment debt if, not later than 28 days after the date of the judgment—

(a) the debt is paid; and

(b) the plaintiff gives the defendant notice from Medicare Australia confirming that no amount of the debt is payable to Medicare Australia; and

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(c) the defendant has not been given a notice under—

(i) the *Social Security Act 1991* (Cwlth), section 1182 (Secretary may send preliminary notice to potential compensation payer or insurer) (a ***preliminary compensation recovery notice***); or

(ii) the *Social Security Act 1991* (Cwlth), section 1184 (Secretary may send recovery notice to compensation payer or insurer) (a ***compensation recovery notice***).

(4) Interest is not payable on the amount of the judgment debt if, not later than 28 days after the date of the judgment, the defendant—

(a) pays to Medicare Australia—

(i) the amount of any charge stated in a Medicare Australia notice of charge given to the defendant; or

(ii) if the defendant has not been given a Medicare Australia notice of charge—10% of the judgment debt; and

(b) pays to the plaintiff—the remainder of the judgment debt.

(5) Interest is not payable on the amount of the judgment debt while a preliminary compensation recovery notice given to the defendant has effect.

Note For the effect of a notice, see the *Social Security Act 1991* (Cwlth), s 1184B (Preliminary notice or recovery notice suspends liability to pay compensation).

(6) Interest is not payable on the amount of the judgment debt if—

(a) the defendant is given a compensation recovery notice; and

(b) the defendant pays the amount of the judgment debt, less any amount owing to the Commonwealth under the notice, to the plaintiff not later than 28 days after the later of the following:

(i) the day the judgment takes effect;

(ii) the day the defendant receives the notice.

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(7) Interest is not payable on any amount awarded for costs if the amount is paid not later than 28 days after—

(a) the day the parties agree on the amount; or

(b) if paragraph (a) does not apply—the day the costs are assessed.

1623 Change in interest rates up to and after judgment

The advisory committee may recommend a change in the rates of interest set out in schedule 2 to take effect on 1 January of the year following the recommendation.

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Part 2.17 Costs

Division 2.17.1 Costs generally

1700 Definitions—pt 2.17

In this part:

costs of the proceeding, for a proceeding, means costs of all the issues in the proceeding, and includes—

(a) costs ordered to be costs of the proceeding; and

(b) costs of complying with the necessary steps before starting the proceeding; and

(c) costs otherwise incurred for the purpose and benefit of the proceeding before starting the proceeding; and

(d) costs incurred before or after the start of the proceeding for successful or unsuccessful negotiations for settlement of the dispute.

Note 1 The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders (see r 1721 (2) (Costs—general rule)).

Note 2 This definition also applies outside this part.

party includes a person not a party to a proceeding by or to whom assessed costs of the proceeding are payable.

prescribed scale of costs means the scale of costs in schedule 4 (Scale of costs).

trustee includes a personal representative of a deceased individual.

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1701 Costs—general provisions

(1) The costs that the court may award—

(a) may be awarded at any stage of a proceeding or after the proceeding ends; and

(b) must be assessed in accordance with this part.

(2) If the court awards the costs of an application in a proceeding, it may order that the costs not be assessed until the proceeding ends.

Note 1 ***Application*** in a proceeding is defined in r 6006.

Note 2 The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders (see r 1721 (2) (Costs—general rule)).

Note 3 Pt 6.2 (Applications in proceedings) applies to an application for an order under r (2).

1702 Costs—agreement about costs

(1) If a party entitled to costs and a person liable for costs agree that the costs be set at a certain amount (the ***agreed amount***), either party may file a written agreement to the costs being set at the agreed amount.

(2) The agreement must be signed by the parties or their solicitors.

(3) On the filing of the agreement, the agreed amount is taken to be the assessed costs between the parties.

1703 Costs—order against non-party

(1) Unless these rules otherwise provide, the court must not make an order for costs in a proceeding against a person who is not a party to the proceeding except in accordance with subrule (2).

Note For provisions of these rules that otherwise provide, see r 745 (Freezing orders—costs) and r 755 (Search orders—costs).

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(2) The court may make an order—

(a) for payment by a relator in a proceeding of all or part of the costs of a party to the proceeding; or

Note A relator is a person who starts and carries on a proceeding in the Attorney-General's name. A person may bring a proceeding as relator with the Attorney-General's permission (or fiat) where the proceeding involves the public interest and the person would otherwise not have standing to bring the proceeding.

(b) for payment by a person of all or part of the costs of a party to a proceeding that were caused by—

(i) the person's contravention of an order made by the court in the proceeding that is binding on the person; or

(ii) the person's breach of an undertaking given to the court by the person in the proceeding; or

(c) for payment, by a person who has committed contempt of court or an abuse of the court's process, of all or part of the costs of a party to a proceeding that were caused by the contempt or abuse of process; or

(d) for costs against a person who purports, without authority, to conduct a proceeding in the name of someone else; or

(e) for costs against a person who starts or carries on a proceeding, or purports to do so, as an authorised director of a corporation; or

(f) of the kind mentioned in rule 1704; or

(g) for costs against a person in the exercise of its supervisory jurisdiction over its own proceedings and its own officers,

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including, for example, an order for costs against legal practitioners and court-appointed liquidators and receivers.

Note 1 The court may order a legal practitioner to pay all or part of a party's costs if the costs are incurred because of the practitioner's conduct (see r 1753 (Costs—legal practitioner's delay etc).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The court may make an order under subrule (2) (g) on its own initiative if justice requires it.

1704 Costs—failure to comply with subpoena etc

(1) This rule applies if, in a proceeding—

(a) a person is ordered by the court, by subpoena or otherwise, to attend court—

(i) to give evidence; or

(ii) to produce a document or thing; or

(iii) to answer a charge of contempt; or

(iv) for any other purpose; or

(b) a person is required by a notice for non-party production to produce a document for inspection.

(2) If the order is not complied with, the court may order the person to pay any costs of a party to the proceeding caused by the noncompliance.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) This rule does not limit any power of the court to punish for contempt.

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1705 Costs—for issue or part of proceeding

(1) The court may make an order for costs in relation to a particular issue in, or a particular part of, a proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) For subrule (1), the court may declare what percentage of the costs of the proceeding is attributable to the issue or part of the proceeding to which the order relates.

1706 Costs—if unnecessary to continue proceeding

(1) If, for any reason, it becomes unnecessary to continue a proceeding other than for deciding who is to pay the costs of the proceeding, any party to the proceeding may apply to the court for an order for the costs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court may make the order it considers just.

1707 Costs—proceeding removed to another court

(1) This rule applies if a proceeding is removed to the court from another court or tribunal (the ***first court***).

(2) For the proceeding—

(a) if the first court has not made an order for costs—the court may make an order for the costs of the proceeding, including the costs before the removal; and

(b) any order for costs made by the first court may be assessed and enforced as if it were an order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) Unless the court otherwise orders, the costs up to the time of the removal must be assessed as if the proceeding had remained in the first court.

1708 Costs—in account

If the court orders that an account be taken and the account is partly for costs, the court may set costs or order that the registrar assess costs under this part.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 2.17.2 Entitlement to costs

1720 Costs—entitlement to recover

(1) A party to a proceeding cannot recover any costs of the proceeding from another party or anyone else otherwise than by agreement, under a territory law, or an order of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) If, under a territory law or an order of the court, a party is entitled to costs, the costs are to be assessed costs.

Note The parties may agree that the costs be set at a certain amount (see r 1702 (Costs—agreement about costs).

(3) However, instead of assessed costs, the court may order a person liable for costs to pay to the party entitled to costs—

(a) a stated part or percentage of assessed costs; or

(b) assessed costs to or from a stated stage of the proceeding; or

(c) an amount for costs decided by the court; or

(d) an amount for costs to be decided in a way the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

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1721 Costs—general rule

(1) The costs of a proceeding or of an application in a proceeding are in the discretion of the court.

(2) The costs of the proceeding include the costs of an application in the proceeding, unless the court otherwise orders.

Note 1 ***Application*** in a proceeding is defined in r 6006.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

1722 Costs—solicitors' costs generally

(1) For assessing costs under this part, unless the court otherwise orders, a solicitor is entitled to charge, and be allowed, the costs under the prescribed scale of costs for work done for or in a proceeding in the court, multiplied by the prescribed percentage.

Note The *Civil Law (Wrongs) Act 2002*, s 181 (Maximum costs for claims of $50 000 or less) limits costs in relation to a claim for personal injury damages if $50 000 or less is recovered, if the cause of action arose after 1 January 2003 or the party and the party's solicitor had an agreement about costs before 1 January 2003 (see *Civil Law (Wrongs) Act 2002*, s 224 (expired)).

(2) The costs under the prescribed scale of costs for work done are inclusive of any GST payable in relation to the work.

(3) However, the costs payable to a party are reduced by the amount of any input tax credit for GST to which the party is entitled in relation to the party's costs.

(4) In this rule:

prescribed percentage means—

(a) for a proceeding in the Supreme Court—100%; or

(b) for a proceeding in the Magistrates Court—

(i) if the relevant amount is less than $10 000—33%; or

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(ii) if the relevant amount is not less than $10 000 but less than $25 000—67%; or

(iii) if the relevant amount is not less than $25 000 but less than $40 000—80%; or

(iv) if the relevant amount is not less than $40 000 but less than $50 000—90%; or

(v) if the relevant amount is not less than $50 000—100%.

relevant amount—see rule 1723.

1723 Costs—*relevant amount* for Magistrates Court proceedings

(1) For a proceeding in the Magistrates Court in which a counterclaim is not issued, the ***relevant amount*** for costs is—

(a) if judgment in the proceeding is given for the plaintiff and if the defendant pays any amount to the plaintiff after the proceeding starts—the amount for which judgment is given together with the total of the amounts paid to the plaintiff after the proceeding started; or

(b) if judgment in the proceeding is given for the plaintiff—the amount for which judgment is given; or

(c) if judgment in the proceeding is given against the plaintiff, or the plaintiff is otherwise required to pay the costs of the proceeding—the amount for which the originating process in the proceeding was issued.

(2) For a proceeding in the Magistrates Court in which a counterclaim is issued, the ***relevant amount*** for costs is—

(a) if judgment in the proceeding and the counterclaim is given for the plaintiff in the proceeding—

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(i) for costs incurred before service on the plaintiff of the counterclaim—the amount for which judgment is given; and

(ii) for costs incurred after service on the plaintiff of the counterclaim—the amount for which judgment is given or the amount for which the counterclaim was issued, whichever is the higher; or

(b) if judgment in the proceeding and the counterclaim is given for the defendant in the proceeding—the amount for which the originating process in the proceeding was issued or the amount for which judgment on the counterclaim was given, whichever is the higher; or

(c) if judgment in the proceeding is given for the plaintiff in the proceeding and in the counterclaim is given for the defendant in the proceeding—

(i) for costs payable to the plaintiff—the amount for which judgment on the originating process was given; and

(ii) for costs payable to the defendant—the amount for which judgment on the counterclaim was given; or

(d) if judgment in the proceeding is given against the plaintiff in the proceeding and in the counterclaim is given against the defendant in the proceeding—

(i) for costs payable by the plaintiff—the amount for which the originating process in the proceeding was issued; and

(ii) for costs payable by the defendant—the amount for which the counterclaim was issued.

(3) For a proceeding in the Magistrates Court in which an amount is not claimed, the court may set an amount for the proceeding (the ***relevant amount***), having regard to the nature and complexity of the proceeding.

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1724 Solicitors' costs—separate judgments against defendants in Magistrates Court

(1) This rule applies to a proceeding in the Magistrates Court in which there are 2 or more defendants.

(2) If judgment for or including costs in the proceeding is given separately against 2 or more defendants, the costs must be assessed once only against the defendants on the basis of the larger or largest judgment.

(3) On the assessment of costs, costs incurred against any defendant must be allowed against all of the defendants.

(4) The plaintiff may enforce a costs order under this rule against any 1 or more of the defendants against whom the order is made.

(5) However, the defendants are liable as between themselves to contribute to the costs in proportion to the respective amounts for which judgment was given against each defendant in the proceeding.

1725 Solicitors' costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction

(1) This rule applies to a proceeding in the Supreme Court if—

(a) the Magistrates court—

(i) would have had jurisdiction and power to hear and decide the proceeding; or

(ii) would, apart from the amount claimed, have had jurisdiction and power to hear and decide the proceeding; and

(b) the plaintiff is entitled to the costs of the proceeding; and

(c) judgment (including judgment by consent) is entered for the plaintiff in the proceeding for an amount (excluding costs) of less than $175 000.

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(2) The plaintiff is entitled to the following determined fee and costs only—

(a) the amount of any Magistrates Court determined fee that the plaintiff would have been entitled to recover had the proceeding been started in the Magistrates Court;

(b) if the plaintiff is awarded an amount (excluding costs) of less than $50 000—50% of the disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than $250 000;

(c) if the plaintiff is awarded an amount (excluding costs) of $50 000 or more, but less than $100 000—50% of the costs and disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than $250 000;

(d) if the plaintiff is awarded an amount (excluding costs) of $100 000 or more, but less than $175 000—75% of the costs and disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than $250 000.

(3) Despite subrule (2), the court may order that the plaintiff is entitled to a different amount for the costs and disbursements (including the amount of any determined fee).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(4) In this rule:

determined fee means the relevant determined fee under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees) in relation to a proceeding in the Magistrates Court or the Supreme Court (and includes a fee determined under any other territory law that applied to a proceeding in that court before the commencement of that part).

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1726 Costs—amendment of documents

(1) This rule does not apply to a party who amends a document because of another party's amendment or default.

(2) A party who amends a document must pay the costs of and caused by the amendment, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

1727 Costs—party not interested in application

If a party appears on an application in a proceeding in which the party has no interest, or ought not to attend, the party must not be allowed the costs of the appearance, unless the court otherwise orders.

Note 1 ***Application*** in a proceeding is defined in r 6006.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

1728 Costs—for application reserved

If the court reserves costs of an application in a proceeding, the costs reserved become costs in the cause, unless the court otherwise orders.

Note 1 ***Application*** in a proceeding is defined in r 6006.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 3 If a proceeding is removed to the court from another court or tribunal, the costs up to the time of the removal must be assessed as if the proceeding had remained in the court from which it was removed (see r 1707 (Costs—proceeding removed to another court).

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1729 Costs—extending or shortening time

A party applying for the extension or shortening of a time set under these rules must pay the costs of the application or any order made on or because of the application, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

1730 Costs—inquiry to find person entitled to property

The costs of an inquiry to find out who is entitled to a legacy, money, share or other property must be paid out of the property, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

1731 Costs—assessment of receiver's costs

The costs of a receiver appointed in a proceeding may be assessed by the registrar on the application of the receiver or a party to the proceeding.

1732 Costs—trustee

(1) This rule applies to a party who sues or is sued as trustee.

(2) Unless the court otherwise orders—

(a) the party is entitled to have costs of the proceeding that are not paid by someone else paid out of the fund held by the trustee; and

(b) the costs must be assessed on a solicitor and client basis.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(3) However, the costs caused by an unsuccessful claim or unsuccessful resistance to any claim to any property must not be paid out of the fund, unless the court otherwise orders.

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1733 Costs—solicitor appointed litigation guardian

(1) This rule applies if a solicitor is appointed by the court as litigation guardian of a person with a legal disability.

(2) The court may direct that the solicitor's costs incurred in exercising the functions of litigation guardian must be paid—

(a) by all or any of the parties to the proceeding in which the appointment is made; or

(b) out of a fund in court (if any) in which the person is interested.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions under this rule.

(3) The court may give directions for the payment of costs mentioned in subrule (2).

1734 Costs—assessment costs

(1) The costs of a proceeding include the costs of preparing a bill of costs and attending the assessment of costs.

(2) This rule is subject to rule 1809 (3) (a) (ii) (Costs—default assessment if no objection to bill of costs).

1735 Costs—counsel's advice and settling documents

The costs of a proceeding may include costs incurred for—

(a) the advice of counsel on pleadings, evidence or other matters in a proceeding; and

(b) counsel drawing or settling any pleading or other document in a proceeding that is appropriate for counsel to draw or settle.

1736 Costs—evidence

(1) The costs of a proceeding may include costs incurred in procuring evidence, and the attendance of witnesses or the production of documents.

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(2) For this rule, the attendance of a witness includes an attendance at any necessary conference with counsel before the trial and, if the witness is an expert, qualifying to give evidence as an expert.

Examples of costs incurred

1 reasonable conduct money or witness expenses paid to a witness, whether or not the witness attended under subpoena

2 reasonable expenses of preparing and proving plans, drawings, models or photographs

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1737 Costs—solicitor advocate

(1) This rule applies if a solicitor appears on a trial alone or instructed by a partner or employee.

(2) The registrar must not allow the solicitor or partner a fee for preparing a brief.

(3) The registrar may allow a single fee for preparing for the trial.

1738 Costs—retainer for counsel

In assessing costs on a party and party basis, the registrar must not allow a fee paid to counsel as a retainer.

1739 Costs—counsel's fees for applications

(1) If the court certifies the use of counsel on an application in a proceeding, the registrar must allow counsel's fees for the application.

Note ***Application*** in a proceeding is defined in r 6006.

(2) However, if the court does not certify the use of counsel on the application, the registrar must not draw any inference about allowing counsel's fees.

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1740 Costs—fixed costs for winding-up application

(1) This rule applies to an application to wind up a company under schedule 6, part 6.5 (Winding-up proceedings (including oppression proceedings where winding-up is sought)) if—

(a) the court orders the company to be wound up; or

(b) the applicant discontinues the application on a condition that the company pay an amount to the applicant.

(2) The applicant's costs and disbursements (plus any filing and service fees actually paid) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 3.3 (Company winding-up).

(3) The costs allowed under subrule (2) are inclusive of any GST payable in relation to the work.

(4) However, the costs payable to a party are reduced by the amount of any input tax credit for GST to which the party is entitled in relation to the party's costs.

(5) The applicant's costs and disbursements must be agreed or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying, from time to time, under schedule 3, part 3.3 (Company winding-up).

Note See r 1702 (Costs—agreement about costs).

1741 Costs—fixed costs for enforcement order

(1) This rule applies to an application for an enforcement order under part 2.18 (Enforcement) if the court makes an enforcement order.

(2) The enforcement creditor's costs (plus any disbursements actually paid) must be allowed without assessment if the costs claimed (other than any disbursements actually paid) are not more than the costs amount applying, from time to time, under—

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(a) if the work was done by the enforcement creditor's solicitor as an agent for another solicitor—schedule 3, part 3.4, column 3; or

(b) in any other case—schedule 3, part 3.4, column 4.

(3) The costs allowed under subrule (2) are inclusive of any GST payable in relation to the work.

(4) However, the costs payable to the enforcement creditor are reduced by the amount of any input tax credit for GST to which the enforcement creditor is entitled in relation to the enforcement creditor's costs.

(5) The enforcement creditor's costs and disbursements must be agreed or assessed if the costs claimed (other than disbursements actually paid) are more than the costs amount applying, from time to time, under schedule 3, part 3.4 (Enforcement orders).

Note See r 1702 (Costs—agreement about costs).

Division 2.17.3 Costs of party in proceeding

1750 Application—div 2.17.3

This division applies to costs that, under a territory law or an order of the court, are to be paid to a party to the proceeding by another party, by a person who is not a party to the proceeding, or out of a fund.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

1751 Costs—assessed on party and party basis

(1) Unless a territory law or an order of the court otherwise provides, the registrar must assess costs on a party and party basis.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise providing.

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(2) In assessing costs on a party and party basis, the registrar must allow all costs that the registrar considers were fair and reasonable for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.

1752 Costs—assessed on solicitor and client etc basis

(1) The court may order costs to be assessed—

(a) on a solicitor and client basis; or

(b) on an indemnity basis; or

(c) on any other basis it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) Without limiting subrule (1), the court may order that costs be assessed on a solicitor and client basis if it orders payment of costs—

(a) out of a fund; or

(b) to a party who sues or is sued as a trustee; or

(c) of an application in a proceeding brought for—

(i) noncompliance with an order of the court; or

(ii) breach of an undertaking given to the court.

(3) In assessing costs on a solicitor and client basis, the registrar must allow all costs reasonably incurred and of a reasonable amount, having regard to—

(a) the costs allowable under rule 1722 (Costs—solicitors' costs generally); and

(b) charges ordinarily payable by a client to a solicitor for the work.

(4) In assessing costs on an indemnity basis, the registrar—

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(a) must allow all costs other than costs unreasonably incurred (with the party paying the costs having the onus of proving that the costs were unreasonably incurred); and

(b) may have regard to any costs agreement between the party to whom the costs are payable and the party's solicitor.

1753 Costs—legal practitioner's delay etc

(1) This rule applies to a legal practitioner acting for a party to a proceeding if—

(a) the hearing of the proceeding, or an application in the proceeding, did not proceed, and a party to the proceeding incurred costs, because the practitioner—

(i) failed to attend the hearing either personally or by someone on his or her behalf; or

(ii) failed to file a document; or

(iii) failed to deliver a document or thing necessary for use in the hearing; or

(iv) failed to do anything else required to be done under these rules or in accordance with the practice of the court; or

(b) a party to the proceeding incurred costs because of the delay, misconduct or negligence of the practitioner.

(2) The court may order the legal practitioner—

(a) to repay to a party all or part of any costs ordered to be paid by the party to another party because of the practitioner's conduct; or

(b) to pay the costs incurred by any party because of the practitioner's conduct.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) The court may, on its own initiative, order the legal practitioner not to charge the practitioner's client costs in relation to all or any part of the proceeding if justice requires it.

1754 Costs—disallowance of costs for vexatious document etc

(1) The court may order that the costs of anything done, or any document prepared or used, in a proceeding be disallowed completely or partly if it considers—

(a) for something done—any of the following:

(i) that doing the thing was, completely or partly, improper, vexatious or unreasonable;

(ii) that the thing was done because of misconduct or negligence;

(iii) that doing the thing caused unnecessary expense; or

(b) for a document—any of the following:

(i) that the document was, completely or partly, improper, vexatious or unreasonable;

(ii) that the document was prepared or used because of misconduct or negligence;

(iii) that the document was unnecessarily lengthy;

(iv) if there is an approved form for a document—that the document substantially departs from the approved form.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

(2) The court may direct the registrar to consider anything done, or any document prepared or used, in a proceeding, and to disallow, completely or partly, the costs of the thing or document, or to assess costs as a lump sum, if the registrar considers—

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(a) for something done—any of the following:

(i) that doing the thing was, completely or partly, improper, vexatious or unreasonable;

(ii) that the thing was done because of misconduct or negligence;

(iii) that doing the thing caused unnecessary expense; or

(b) for a document—any of the following:

(i) that the document was, completely or partly, improper, vexatious or unreasonable;

(ii) that the document was prepared or used because of misconduct or negligence;

(iii) that the document was unnecessarily lengthy;

(iv) if there is an approved form for a document—that the document substantially departs from the approved form.

Note Rule 6144 (Rejecting document—costs) provides that costs incurred by a party in relation to a document rejected under div 6.3.3 may be disallowed on assessment of the party's costs.

Division 2.17.4 Costs—registrar's powers and discretion

1760 Costs—registrar's general powers

For assessing costs, the registrar may do any of the following:

(a) if satisfied that a stamped copy of a bill of costs cannot be served within a reasonable time—dispense with service;

(b) direct a party to subpoena someone to attend a hearing, or produce a document or thing, before the registrar;

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(c) if satisfied there is or may be a conflict of interest between a party's legal practitioner and the party—require the party to be represented by another legal practitioner;

(d) unless the court otherwise orders, extend or shorten the time for taking any step in the assessment;

(e) administer an oath or receive an affirmation;

(f) examine witnesses;

(g) direct or require a party to produce documents;

(h) give directions about the conduct of the assessment;

(i) assess the costs in the absence of a party to the proceeding if the party does not appear at the time set for the assessment;

(j) anything else the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

1761 Costs—registrar's discretion in assessing

In assessing costs, the registrar must consider the following:

(a) any other fees and allowances payable to the solicitor or counsel for other items in the same proceeding;

(b) the nature and importance of the proceeding;

(c) the amount involved;

(d) the principle involved;

(e) the interest of the parties;

(f) the fund, estate, or person who is to pay the costs;

(g) the general conduct and cost of the proceeding;

(h) any other relevant circumstances.

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Division 2.17.5 Procedure for assessing costs

1800 Costs—when bill of costs to be filed etc

(1) This rule applies if costs are to be paid to a party to a proceeding by another party, by a person who is not a party to the proceeding, or out of a fund—

(a) under—

(i) a territory law; or

(ii) an order of the court; or

(iii) a filed written agreement; but

(b) the party entitled to costs and the person liable for costs cannot agree on the amount of costs to be paid.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) The costs must be assessed by the registrar.

(3) The party entitled to costs must file a bill of costs.

(4) On receipt of the bill of costs, the registrar must write on the bill, and a stamped copy of the bill, the day and time when the bill is to be assessed.

(5) The party entitled to costs must serve a stamped copy of the bill on each party liable to pay the costs not later than 6 weeks before the day the costs are to be assessed.

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1801 Costs—if costs out of fund bill to be sent to clients

(1) This rule applies if the costs of a proceeding are to be paid out of a fund or property.

(2) The registrar may, before finishing the assessment, direct the solicitor whose costs are to be assessed to send to all or any of the solicitor's clients, free of charge—

(a) a copy of the bill of costs or any part of it; and

(b) any statement directed by the registrar; and

(c) a letter telling the clients—

(i) the bill of costs is to be assessed by the registrar; and

(ii) the time set for the assessment.

(3) If the registrar gives a direction under subrule (2), the registrar may suspend the assessment of the costs for the time the registrar considers reasonable.

1802 Costs—content of bill of costs

A bill of costs must contain—

(a) the name and address for service of the solicitor whose costs are to be assessed; and

Note ***Address for service*** is defined in the dictionary.

(b) each item of work claimed, or disbursement made, numbered consecutively; and

(c) the date each item of work was done; and

(d) the number of the item in the prescribed scale of costs for each item of work claimed; and

(e) a detailed statement of the work done by the solicitor, or the solicitor's employee or agent, for the party; and

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(f) a detailed statement of the disbursements made; and

(g) the date each disbursement was made; and

(h) the costs claimed for each item of work done or disbursement made.

Note See approved form 2.45 (Bill of costs) AF2006-290.

1803 Costs—failure to file and serve bill of costs

(1) If a party entitled to costs delays filing and serving a bill of costs, a party liable to pay the costs may, by notice, require the party entitled to costs to file and serve a bill of costs.

(2) If the party entitled to costs does not file and serve a bill of costs before the end of 30 days after the day the notice under subrule (1) is served, the registrar may direct the party entitled to costs to file and serve a bill of costs within a time set by the registrar, having regard to any representation made by the party not later than the end of the 30-day period.

(3) If the party does not comply with the registrar's direction, the registrar may—

(a) either—

(i) disallow the costs; or

(ii) allow costs at a nominal or other amount; and

(b) order the party to pay to another party costs incurred because of the failure to comply with the direction.

1804 Costs—payment of disbursements

(1) If a party's bill of costs includes an account that has not been paid, the party may claim the amount as a disbursement.

(2) The registrar may allow the amount as a disbursement only if it is paid before the registrar issues a certificate of assessment under rule 1835 (Costs—registrar's certificate of assessment).

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(3) Subrule (2) does not apply to counsel's fees properly incurred by the party in the proceeding.

1805 Costs—professional charges and disbursements

(1) If a bill of costs includes a charge for work done by a solicitor practising in the ACT and acting as agent for a party's solicitor, the charge must be shown as a professional charge, not as a disbursement.

(2) The registrar may assess and allow a charge mentioned in subrule (1) even though it is not paid before the assessment.

(3) If a bill of costs includes a charge for work done by a solicitor or counsel practising outside the ACT, the charge must be shown as a disbursement.

(4) If the registrar allows a charge mentioned in subrule (3) when assessing costs, the amount the registrar allows must, as far as practicable, be an amount appropriate in the place where the solicitor or counsel practises.

1806 Costs—amendment and withdrawal of bill of costs

(1) The court may at any time, by order, allow a party to amend or withdraw a bill of costs or order that a party file another bill of costs.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) Unless the court otherwise orders, the amendment or withdrawal and replacement of a bill of costs must be disregarded in deciding whether—

(a) under rule 1834 (Costs—bill of costs reduced by 15% or more), the bill of costs has been reduced by 15% or more on assessment; or

Note If costs are payable out of a fund or estate, or out of the assets of a company in liquidation, and the bill of costs is reduced by 15% or more on assessment, the registrar must not allow the solicitor whose costs are assessed the costs of preparing the bill or attending the assessment, unless the registrar otherwise orders (see r 1834 (Costs—bill of costs reduced by 15%)).

(b) the amount of the assessed costs in the bill of costs is more than, equal to or less than an offer mentioned in rule 1811 (Costs—offer to settle).

1807 Costs—notice of objection to bill of costs

(1) A party on whom a bill of costs is served may, by notice, object to any item in the bill.

(2) The notice of objection must—

(a) number each objection; and

(b) give the number of each item in the bill of costs to which the party objects; and

(c) for each objection—briefly state the reasons for the objection identifying any issue of law or fact that the objector considers the registrar must consider to make a decision in favour of the objector.

(3) The reasons for objection may be in abbreviated note form but must be understandable without further explanation.

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(4) If the same objection applies to consecutive or near consecutive items in a bill of costs, the notice need not separately state the reasons for objecting to each of the items.

(5) Also, if there are a number of associated items, the objection may be in the form of an objection to a common issue related to the associated items.

(6) The party objecting must file the notice and serve a stamped copy on the party entitled to the costs not later than 14 days before the day the bill of costs is to be assessed.

1808 Costs—assessment must be limited

The registrar must limit the assessment to the resolution of the matters raised in the notice of objection and otherwise assess the costs under rule 1809.

1809 Costs—default assessment if no objection to bill of costs

(1) This rule applies if the party liable for costs does not file a notice of objection to the bill of costs.

(2) On proof that the bill of costs was served on the party liable for the costs, the registrar must—

(a) assess the costs without considering each item and by allowing the costs claimed in the bill of costs; and

(b) issue a certificate of assessment for the amount of the assessed costs.

(3) However—

(a) despite subrule (2) (a)—

(i) the costs must be assessed subject to rule 1804 (Costs—payment of disbursements); and

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(ii) the costs of attending the assessment of costs (other than attendances the registrar considers necessary) , and any other anticipated costs included in the bill, are not allowable; and

(b) subrule (2) (a) does not prevent the registrar correcting an obvious error in the bill of costs or assessing the costs differently in exceptional circumstances.

1810 Costs—setting aside default assessment

(1) On the application of the party liable for costs, the court may amend or set aside a certificate of assessment issued under rule 1809 (2) (b).

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) The application must be supported by—

(a) an affidavit explaining—

(i) the party's failure to file a notice of objection to the bill of costs; and

(ii) any delay; and

(b) a notice of objection under rule 1807, as an exhibit to the affidavit.

(3) Rule 1808 (Costs—assessment must be limited) applies to any reassessment of costs on an application made under this rule.

(4) The costs of an application under this rule are to be paid by the applicant unless the court otherwise orders.

1811 Costs—offer to settle

(1) A party liable to pay costs may serve on the party entitled to the costs a written offer to settle the costs.

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(2) An offer to settle costs—

(a) must state it is made under this rule; and

(b) must be clear and unconditional; and

(c) must be for all of the person's liability for costs (and any interest claimed on the costs) in the proceeding to the party to whom it is made; and

(d) may be served at any time after whichever of the following applies, but at least 2 days before the day the bill of costs is to be assessed:

(i) if costs are payable under an order—the day the order is made;

(ii) if costs are not payable under an order—the day liability for costs accrues.

(3) An offer to settle costs—

(a) cannot be withdrawn without the court's leave; and

(b) does not lapse because the party to whom it is made rejects or fails to accept it; and

(c) ends at the end of 14 days after the day it is made or when the assessment of the bill of costs to which it relates starts (whichever is the earlier).

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(4) Except for rule 1812, a party must not disclose to the registrar the amount of an offer to settle until the registrar has assessed all items in the bill of costs, and decided all issues, other than the cost of the assessment.

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1812 Costs—acceptance of offer to settle

(1) An acceptance of an offer to settle must be in writing.

(2) If a party gives the registrar a copy of the offer and the acceptance of the offer, the amount of the offer is taken to be assessed costs of the proceeding.

1813 Costs—rejection of offer to settle

(1) This rule applies if a party entitled to costs does not accept an offer to settle made under rule 1811 by a party liable to pay the costs.

(2) If the amount of the bill of costs allowed by the registrar, before deciding the costs of the assessment, is equal to, or more than, the amount of the offer, the party liable to pay the costs must pay the costs of the assessment, unless the registrar otherwise orders.

(3) If the amount of the bill of costs allowed by the registrar, before deciding the costs of the assessment, is less than the amount of the offer, the party entitled to the costs must not recover the costs of the assessment, but must pay the costs of the assessment of the party liable for the costs, unless the registrar otherwise orders.

(4) For this rule, the costs of the assessment of a party are the costs that have been, or will be, incurred by the party on and from the day the offer to settle was served, and includes any fee determined under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees) for the assessment.

1814 Costs—Calderbank offer to settle

(1) This rule applies if a party entitled to costs serves on the party liable to pay the costs—

(a) a bill of costs; and

(b) not before the bill of costs is served—a written offer to settle the costs.

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(2) The offer to settle costs must state that, if the offer is not accepted and the amount of the bill of costs allowed by the registrar for costs up to the date of the offer is equal to, or more than, the amount of the offer, the party entitled to the costs may apply to the court for an order that the costs of the assessment be assessed on a basis other than a party and party basis.

(3) A party must not disclose to the registrar the amount of an offer to settle until the registrar has assessed all items in the bill of costs, and decided all issues, other than the costs of the assessment.

(4) If the amount of the bill of costs allowed by the registrar for costs up to the date of the offer is equal to, or more than, the amount of the offer, the party entitled to costs may apply to the court for an order in relation to the costs of the assessment.

Note 1 The court may order that costs be assessed on a basis other than a party and party basis (see r 1752 (1) (b)).

Note 2 The registrar may exercise the jurisdiction of the court under r 1752 (1) (b) (see r 6250 (2) (a) and r 6251 (2) (a), and sch 5, pt 5.1 and pt 5.4)

Division 2.17.6 Procedure on costs assessment

1830 Costs—attendance of parties at assessment

(1) The registrar may give directions about—

(a) who must be served with a bill of costs; and

(b) who should attend or be represented when the registrar is assessing costs.

(2) If the registrar considers a person's attendance at an assessment is unnecessary, the registrar may disallow the costs of the person's attendance.

(3) This rule does not prevent a person affected by an assessment attending the assessment.

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(4) If the registrar gives a direction under subrule (1) (a) and costs are payable by a fund, the party entitled to costs must also serve a notice—

(a) identifying the fund; and

(b) stating that the costs in the bill of costs are payable by the fund; and

(c) stating when the costs are to be assessed; and

(d) containing any other information the registrar requires to be included in the notice.

1831 Costs—notice of adjournment of assessment

(1) If an assessment is adjourned for any reason, the party with the carriage of the assessment must give notice of the adjournment to any solicitor or party served with the original bill of costs but not present when the assessment was adjourned.

(2) This rule applies unless the registrar otherwise directs.

1832 Costs—delay before registrar etc

If, on an assessment before the registrar, a party or a legal practitioner acting for a party, puts another party to any unnecessary or improper expense or inconvenience because of neglect or delay, the registrar may—

(a) order the first party to pay the costs, or part of the costs, of the proceeding before the registrar to any party; or

(b) refuse to allow fees to which the practitioner would otherwise be entitled.

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1833 Costs—set off of costs

(1) If a party entitled to be paid costs is also liable to pay costs, the registrar may—

(a) assess the costs the party is liable to pay, set off the amount assessed against the amount the party is entitled to be paid, and by order set the amount of the balance and by whom the balance is payable; or

(b) decline to make an order for costs the party is entitled to be paid until the party has paid the amount the party is liable to pay.

(2) Costs may be set off under subrule (1) even though a solicitor for a party has a lien for costs of the proceeding.

1834 Costs—bill of costs reduced by 15% or more

(1) This rule applies if on the assessment of costs payable out of a fund or estate, or out of the assets of a company in liquidation, the amount of professional charges and disbursements is reduced by 15% or more.

(2) The registrar must not allow the solicitor filing the bill of costs for assessment any costs for preparing the bill of costs or attending the assessment, unless the registrar otherwise orders.

1835 Costs—registrar's certificate of assessment

(1) The registrar must issue a certificate of assessment for the amount at which a bill of costs has been assessed.

Note See approved form 2.46 (Certificate of costs assessment) AF2006-291.

(2) However, the registrar must not sign the certificate of assessment until the end of 14 days after the day the assessment is made, unless the parties to the assessment agree.

Note An application for reconsideration may be filed within the 14-day period (see r 1852 (Costs—procedure for reconsideration)).

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(3) Subrule (2) does not apply if—

(a) costs are assessed under rule 1809 (Costs—default assessment if no objection to bill of costs); or

(b) an offer to settle is accepted under rule 1812 (Costs—acceptance of offer to settle).

(4) If a notice is filed under rule 1852 in relation to the assessment, the registrar must not sign the certificate of assessment until after the reconsideration procedure ends.

(5) However, if a notice is not filed under rule 1852 in relation to the assessment, the registrar must sign and file the certificate of assessment.

(6) The certificate of assessment is final when it is signed, sealed and filed by the registrar, and operates as if the certificate were an order of the court.

1836 Costs—interim certificates of assessment

The registrar may issue 1 or more interim certificates of assessment in an assessment for any part of the assessed costs, without waiting until a certificate of assessment can be issued for the full amount of the assessed costs.

Division 2.17.7 Reconsideration and review of costs assessment

1850 Application—div 2.17.7

This division does not apply to—

(a) an assessment under rule 1809 (Costs—default assessment if no objection to bill of costs); or

(b) an interim assessment under rule 1836.

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1851 Costs—application for reconsideration

(1) This rule applies if a party has objected under rule 1807 (Costs—notice of objection to bill of costs) or attends an assessment and objects to any decision of the registrar.

(2) The party may apply to the registrar in accordance with rule 1852 for reconsideration of the decision.

(3) For this rule, the registrar does not make a decision on an item in a bill of costs if no-one objected, or sought to object, to the item and the registrar allows the item.

1852 Costs—procedure for reconsideration

(1) A party must apply for reconsideration of a decision of the registrar under this part by notice given to the registrar.

Note See approved form 2.47 (Notice for reconsideration of costs assessment) AF2006-292.

(2) The notice must be filed not later than 14 days after the day the assessment was made.

(3) The applicant must file with, or include in, the notice a statement of objection.

(4) The statement of objection must—

(a) give the number of each item in the bill of costs to which the decision objected to relates; and

(b) for each objection—briefly state the reasons for the objection identifying any issue of law or fact the applicant considers the registrar must consider to make a decision in favour of the applicant.

(5) The applicant must, not later than 3 days after the day the notice and statement of objection are filed, serve a stamped copy of the notice and statement on any other party who attended the assessment.

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(6) If the applicant is the party liable to pay the costs, the applicant must not include in the statement of objection any objection not previously taken or sought to be taken.

1853 Costs—reply to objection on reconsideration

(1) If a party to an assessment is served with a notice and statement of objection under rule 1852, the party may file a reply to the statement of objection.

Note See approved form 2.48 (Reply to statement of objection for costs assessment) AF2006-293.

(2) The reply must state specifically any issue of law or fact that the party filing the reply considers the registrar must consider to make a decision in favour of the party.

(3) The party must serve a stamped copy of the reply on the party who applied for reconsideration.

(4) The reply must be filed and served not later than 14 days after the day the statement of objection is served.

1854 Costs—reconsideration of registrar's assessment

(1) If a party files a notice and statement under rule 1852 (Costs—procedure for reconsideration), the registrar must—

(a) reconsider a decision objected to having regard to the statement of objection and any reply filed under rule 1853; and

(b) give reasons for the decision on reconsideration; and

(c) issue a certificate of assessment in accordance with the decision on reconsideration.

(2) Subject to rule 1855, a certificate of assessment issued under subrule (1) (c) is final.

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1855 Costs—review by court

(1) A party dissatisfied with the decision of the registrar on reconsideration under rule 1854 may apply to the court to review the decision.

(2) The application must—

(a) give the number of each item in the bill of costs to which the decision objected to relates; and

(b) state briefly, but specifically, the grounds for objecting to the decision; and

(c) state briefly the reasons for the grounds; and

(d) state the decision sought from the court in relation to each objection.

(3) The party must file the application, and serve a stamped copy of it on all other parties to the assessment, not later than 14 days after the day the registrar made the decision on reconsideration under rule 1854.

(4) Unless the court otherwise orders, on the review a party must not—

(a) present evidence; or

(b) raise any ground of objection not stated in a statement of objection or raised before the registrar.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(5) On the review, the court may—

(a) exercise all the powers of the registrar in relation to the items of the bill of costs under objection; and

(b) amend or set aside the registrar's decision; and

(c) return any item in the bill of costs to the registrar for reconsideration, whether with or without directions to the registrar; and

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(d) make any other order it considers appropriate.

(6) Unless the court otherwise orders, the review does not operate as a stay of the registrar's decision.

Division 2.17.8 Security for costs

1900 Security for costs—application and order

(1) On application by a defendant, the court may order the plaintiff to give the security it considers appropriate for the defendant's costs of the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) An application must be supported by an affidavit setting out the facts relied on and the grounds on which the order is sought.

1901 Security for costs—when court may make order

The court may order a plaintiff to give security for costs under rule 1900 only if satisfied—

(a) the plaintiff is a corporation and there is reason to believe the plaintiff will not be able to pay the defendant's costs if ordered to pay them; or

(b) the plaintiff is suing for the benefit of someone else, rather than for the plaintiff's own benefit, and there is reason to believe the plaintiff will not be able to pay the defendant's costs if ordered to pay them; or

(c) the plaintiff's address is not stated, or is misstated, in the originating process, and there is reason to believe that the failure to state an address, or the misstatement of the address, was made with intention to deceive; or

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(d) the plaintiff has changed address since the start of the proceeding and there is reason to believe this was done to avoid the consequences of the proceeding; or

(e) the plaintiff is ordinarily resident outside Australia; or

(f) the plaintiff is, or is about to depart Australia to become, ordinarily resident outside Australia and there is reason to believe the plaintiff has insufficient fixed and permanent property in Australia available for enforcement to pay the defendant's costs if ordered to pay them; or

(g) a territory law authorises the order to be made; or

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(h) the justice of the case requires the order to be made.

1902 Security for costs—discretionary factors

(1) In deciding whether to make an order for security for costs under rule 1900, the court may have regard to any of the following matters:

(a) the means of the people standing behind the proceeding;

(b) the prospects of success or merits of the proceeding;

(c) the genuineness of the proceeding;

(d) for rule 1901 (a)—the corporation's lack of financial resources;

(e) whether the plaintiff's lack of financial resources is attributable to the defendant's conduct;

(f) whether the plaintiff is effectively in the position of a defendant;

(g) whether an order for security for costs would be oppressive;

(h) whether an order for security for costs would stop or limit the progress of the proceeding;

(i) whether the proceeding involves a matter of public importance;

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(j) whether there has been an admission or payment into court;

(k) whether delay by the plaintiff in starting the proceeding has unfairly prejudiced the defendant;

(l) whether an order for costs made against the plaintiff would be enforceable within the jurisdiction;

(m) the estimated costs of the proceeding.

(2) This rule does not limit the matters to which the court may have regard.

1903 Security for costs—way security given

(1) If the court orders the plaintiff to give security for costs, the security must be given for the amount, in the form, at the time the court directs.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

(2) If the court does not state the form of security to be given—

(a) the security must be given in a form satisfactory to the registrar; and

(b) the registrar's approval of the form of security must be written on the order before it is issued.

(3) After giving the security, the plaintiff must serve on the defendant notice of the time when, and the way, the security was given.

1904 Security for costs—effect of order

(1) This rule applies if the court orders the plaintiff to give security for costs.

(2) The time set by these rules or by an order of the court for another party to take a step in the proceeding does not run until security is given.

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(3) If security is not given under the order—

(a) the proceeding is stayed as far as it concerns steps to be taken by the plaintiff; and

(b) the court may, on the defendant's application, dismiss all or part of the proceeding.

1905 Security for costs—setting aside or amending order

The court may, in special circumstances, amend or set aside an order made under this division.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

1906 Security for costs—finalising security

(1) This rule applies if, in a proceeding, security for costs has been given by a party under an order made under this division.

(2) If judgment is given requiring the party to pay all or part of the costs of the proceeding or any application in the proceeding, the security may be applied in satisfaction of the costs.

(3) However, the security must be discharged—

(a) if a judgment is given and the judgment does not require the party to pay all or part of the costs of the proceeding or any application in the proceeding; or

(b) if the court orders the discharge of the security; or

(c) if the party entitled to the benefit of the security agrees to its discharge; or

(d) in relation to the balance after costs have been satisfied under subrule (2).

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Example

A security given by a payment into court is discharged by payment of the security out of court to the party who made the payment.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 2.17.9 Miscellaneous—pt 2.17

1920 Liquidator, guardian or manager—accounts

Division 2.9.5 (Receivers) applies in relation to the accounts of a liquidator, guardian or manager, with any necessary changes, in the same way as it applies to a receiver's accounts.

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Part 2.18 Enforcement

Division 2.18.1 Enforcement—general

2000 Definitions—pt 2.18

In this part:

account, for a financial institution, includes—

(a) a deposit account or withdrawable share account; and

(b) any record of deposit or subscription for withdrawable shares; and

(c) a loan account that has a credit balance.

charging order—see rule 2401.

Note This definition also applies outside this part.

debt redirection order—see rule 2301 (1).

Note This definition also applies outside this part.

defendant, for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551.

earnings, of an enforcement debtor, means any of the following that are owing or accruing to the debtor:

(a) wages or salary, including, for example, any allowance, bonus, commission, fee, overtime pay or other amount received under a contract of employment;

(b) an amount that, although not payable under a contract of employment, is analogous to or in the nature of wages or salary, including, for example, an amount received under a contract for services;

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(c) any other amount received, or the value of any benefit gained, as compensation for services or profit arising from a contract of employment, contract for services or position;

(d) a pension, benefit or similar payment;

(e) an annuity;

(f) an amount payable instead of leave;

(g) retirement benefit.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

earnings redirection order—see rule 2350.

Note This definition also applies outside this part.

employer, of an enforcement debtor, means a person who, as principal, rather than as employee or agent, pays, or is likely to pay, earnings to the enforcement debtor.

Note This term applies to the Territory as an employer (see Legislation Act, s 121 (Binding effect of Acts)).

enforceable money order, of the court, means—

(a) a money order of the court; or

(b) a money order of another court or tribunal filed or registered, under a territory law or a law of the Commonwealth, in the court for enforcement.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 This definition also applies outside this part.

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enforceable non-money order, of the court, means—

(a) a non-money order of the court; or

(b) a non-money order of another court or tribunal filed or registered, under a territory law or a law of the Commonwealth, in the court for enforcement.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

enforcement creditor, for an enforceable money order of the court, means—

(a) the person entitled to enforce the money order; or

(b) the person to whom the benefit of part of the money order has passed by way of assignment or in another way.

Note This definition also applies outside this part.

enforcement debtor, for an enforceable money order of the court, means the person required to pay an amount under the money order.

Note This definition also applies outside this part.

enforcement hearing subpoena means a subpoena issued under rule 2103.

enforcement hearing warrant—see rule 2110 (2).

enforcement officer means the sheriff, a sheriff's officer or a bailiff.

Note This definition also applies outside this part.

enforcement order, of the court—

(a) means an order of the court made under this part to enforce an enforceable money order or non-money order; and

(b) includes an order mentioned in rule 2001 (3), but, to remove any doubt, does not include an instalment order.

Note This definition also applies outside this part.

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exempt property means property that is not divisible among the creditors of a bankrupt under the relevant bankruptcy law as in force from time to time and, for the enforcement debtor for an enforceable money order of the court, includes property of the enforcement debtor to which an order under rule 2202 (1) (Seizure and sale order—additional exempt property) applies.

fourth person, for division 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

instalment order—see rule 2150 (1).

instalment order agreement—see rule 2157.

Note This definition also applies outside this part.

money order means an order of a court or tribunal, or part of an order of a court or tribunal, for the payment to a person (but not into court) of an amount, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

Note 1 ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

Note 2 This definition also applies outside this part.

non-money order means an order of a court or tribunal, or part of an order of a court or tribunal, for a form of relief other than the payment of an amount, whether or not the amount includes an amount for costs.

Note This definition also applies outside this part.

officer, of a corporation, includes a former officer of the corporation.

order debt, for an enforceable money order of the court, means the amount payable under the money order, and includes any amount payable under these rules without the need for an order.

order for delivery of possession of land—see rule 2451.

Note This definition also applies outside this part.

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order for seizure and delivery of goods—see rule 2460.

Note This definition also applies outside this part.

order for seizure and detention of property—see rule 2470.

Note This definition also applies outside this part.

partner includes a former partner.

plaintiff, for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551.

principal officer, of a corporation, means a person who is or has been—

(a) the chair, or president, (however described) of the governing body of the corporation; or

(b) the general manager, chief executive officer, or other person, (however described) having general management of the affairs of the corporation; or

(c) the secretary, treasurer, or other person, (however described) having the general function of accepting correspondence for the corporation.

regular deposit, for division 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

regular redirection order—see rule 2332.

Note This definition also applies outside this part.

security interest—see rule 2401.

seizure and sale order—see rule 2200.

Note This definition also applies outside this part.

senior officer, of a corporation, includes the principal officer of the corporation and anyone else who (whether alone or with others) has or has had powers of management, direction or control of the corporation.

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third person, for division 2.18.6 (which is about debt redirection orders generally)—see rule 2300.

Note The Territory may be a ***third person*** (see Legislation Act, s 121 (Binding effect of Acts)).

2001 Enforcement orders generally

(1) To enforce an order (the ***original order***) (but not an order for the payment of money into court), a person entitled to enforce the original order may obtain an enforcement order from the court.

Note ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

(2) An enforcement order may contain any order directed to enforcing the original order.

(3) Without limiting subrule (2), an enforcement order includes the following orders:

(a) a seizure and sale order (see division 2.18.5);

(b) a debt redirection order (see division 2.18.6);

(c) a regular redirection order (see division 2.18.7);

(d) an earnings redirection order (see division 2.18.8);

(e) a charging order (see division 2.18.9);

(f) an order under division 2.18.10 relating to amounts or securities in court;

(g) an order under division 2.18.11 appointing a receiver;

(h) an order for delivery of possession of land (see division 2.18.13);

(i) an order for seizure and delivery of goods (see division 2.18.14);

(j) an order for seizure and detention of property (see division 2.18.15);

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(k) an order issuing an arrest warrant or an arrest and detention warrant under division 2.18.16 (Contempt).

(4) An enforcement order may contain 2 or more orders directed to enforcing the original order and may be made to enforce an original order that is a money order and a non-money order.

(5) Without limiting rule 6901 (Orders may be made on conditions), an enforcement order may be made on conditions about the payment of, or giving security for, the estimated expenses of an enforcement officer in enforcing the order.

2002 Enforcement—enforcement application is application in original proceeding

An application to the court for an enforcement order in relation to an enforceable money order or non-money order of the court is an application in the proceeding in the court in which the money order or non-money order was made, registered or filed.

Example

A person's address for service in the proceeding in the court in which the money order or non-money order was made, registered or filed is the person's address for service for an application to the court for an enforcement order in relation to the money order or non-money order (unless the address for service is changed under these rules).

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2003 Enforcement—by or against non-party

(1) If an order is made in favour of, or obtained by, a person who is not a party to the proceeding in which the order is made, the person may enforce the order as if the person were a party.

(2) However, the person must not start a proceeding to enforce the order unless the person gives the court an address for service.

Note ***Address for service*** is defined in the dictionary.

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(3) If an order is made against a person who is not a party when the order is made, the order may be enforced against the person as if the person were a party.

(4) If an order is made against a corporation that is not a party when the order is made, a senior officer of the corporation is liable to the same process of enforcement as if the corporation were a party.

2004 Enforcement—amount recoverable

(1) The costs of enforcement of an order are recoverable as part of the order.

Note The costs of enforcement may be allowed without assessment if the costs (other than disbursements incurred) are not more than the amount in sch 3, pt 3.4.

(2) Interest on an order debt is recoverable as part of the money order.

2005 Enforcement—separate enforcement for costs

A person entitled to enforce an order with costs may enforce the order and, when the costs become payable, enforce payment of the costs separately.

2006 Enforcement—order in partnership name

(1) An order against partners in the partnership name may be enforced against 1 or more of the following:

(a) partnership property;

(b) a partner who filed a defence;

(c) a person who has admitted being a partner;

(d) a person who the court has decided is a partner;

(e) a person who has been individually served as a partner with the originating process and who has not filed a defence.

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(2) On application by a person entitled to enforce an order against partners in the partnership name, the court may amend the order to make it an order against the people who were partners when the cause of action arose.

Note Pt 6.2 (Applications in proceedings) applies to an application for an amendment or leave under this rule.

(3) On application by a person entitled to enforce an order against partners in the partnership name, the court may give leave for the order to be enforced against someone else who is liable to satisfy the order.

(4) The application for leave must be served on the person against whom the order is sought to be enforced.

Note Rule 6008 (3) (Application in proceeding—filing and service) applies to service of the application for leave.

(5) If, on the hearing of the application for leave, the person denies liability, the court may decide liability summarily or give directions about how liability is to be decided.

2007 Enforcement—against property of partnership

An enforcement order must not be made against property of a partnership except to enforce an order against the partnership.

2008 Enforcement—against property of business

(1) This rule applies if—

(a) a proceeding is brought against a person under a business name; and

(b) rule 291 (Proceeding in business name if unregistered etc) applies to the business name.

(2) An order in the proceeding may be enforced against any property of the person.

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(3) The court may amend an order made in the proceeding to make it an order against the person.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend an order.

2009 Enforcement—enforcement of Supreme Court order in Magistrates Court

(1) If the amount payable under an enforceable money order of the Supreme Court is within the jurisdiction of the Magistrates Court, the order may be enforced in the Magistrates Court.

(2) To enforce the order, the order must be filed in the Magistrates Court.

(3) Unless the Supreme Court otherwise orders, the costs of the order's enforcement, whether in the Supreme Court or the Magistrates Court, must be assessed on the basis of work done for or in relation to a proceeding in the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2010 Enforcement—enforcement of Magistrates Court order in Supreme Court

(1) On application by the enforcement creditor for an enforceable money order of the Magistrates Court, the Magistrates Court may give the enforcement creditor a certificate of—

(a) the money order; and

(b) the amount owing under the money order (including any amount payable for interest and costs).

(2) An application under subrule (1) is made by filing in the Magistrates Court—

(a) a draft certificate; and

(b) an affidavit in support of the application that contains sufficient information to enable the court to give the certificate.

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(3) Part 6.2 (Applications in proceedings) does not apply to the application.

(4) The draft certificate and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(5) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

(6) The court may give a certificate under subrule (1) only if—

(a) a seizure and sale order previously made for the order has been returned completely or partly unsatisfied; or

(b) the court otherwise considers it appropriate.

(7) If the certificate is given, no further action may be taken in the Magistrates Court to enforce the money order.

(8) However, if the certificate, and an affidavit in support setting out the amount owing under the money order and relevant details about interest and costs, is filed in the Supreme Court, final judgment may be entered in the Supreme Court in favour of the enforcement creditor for—

(a) the amount stated in the certificate as the amount owing under the money order; and

(b) any interest and costs up to the day of entry of final judgment.

(9) Subrule (8) does not authorise the giving of interest on interest.

(10) A judgment entered under subrule (8) may be enforced as if it were a money order made by the Supreme Court.

2010A Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act

(1) This rule applies in relation to an application for the registration in a court of an enforceable order of another court or tribunal under the *Service and Execution of Process Act 1992* (Cwlth), section 105.

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(2) An application under subrule (1) is made by filing in the court—

(a) a copy, sealed by the court or tribunal that made the order, of the enforceable order, or a fax of the copy so sealed; and

(b) a draft certificate with a copy of the sealed copy of the order attached.

(3) Part 6.2 (Applications in proceedings) does not apply to the application.

(4) A copy of the enforceable order and draft certificate need not be served on anyone unless the court otherwise orders on its own initiative.

(5) The court may give the applicant a sealed copy of the certificate of registration of the enforceable order, with a copy of the enforceable order sealed by the registering court attached.

Note See approved form 2.85 (Certificate of registration of enforceable order) AF2008-120.

(6) If a fax is filed under subrule (2) (a)—

(a) the copy, sealed by the court or tribunal that made the order, of the enforceable order must be filed with the court not later than 7 working days after the day the fax is filed; and

(b) if the copy so sealed is not filed with the court within the 7-day period, a proceeding to enforce the enforceable order must not be started or continued until the copy is filed or unless the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(7) An application for leave to start, or continue, an enforcement proceeding need not be served on anyone unless the court otherwise orders on its own initiative.

(8) In this rule:

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certificate of registration, of an order, means the certificate given under subrule (5), signed by the registrar, certifying that the enforceable order is registered.

enforceable order means—

(a) an enforceable money order; or

(b) an enforceable non-money order.

working day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday or bank holiday.

2010B Enforcement—assessment of costs for certificate of registration

(1) This rule applies if the court registers an enforceable order of another court under rule 2010A.

(2) The applicant's costs and disbursements (plus any filing and service fees actually paid):

(a) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 3.5 (Certificate of registration); and

(b) must be agreed or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying under schedule 3, part 3.5.

Note See r 1702 (Costs—agreement about costs).

2011 Enforcement—demand for compliance unnecessary

(1) It is not necessary to demand compliance with an order before starting an enforcement proceeding for the order.

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(2) If, under a territory law or a court order, an order must be served on a person before the order may be enforced against the person, the order may be served without a demand for compliance.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

2012 Enforcement—when leave required

(1) A person entitled to enforce an order requires the court's leave to start an enforcement proceeding in the following circumstances:

(a) if the proceeding would be started more than 6 years after the day the order is made;

(b) if the order is against any of the assets of a deceased person coming to the hands of an executor or administrator after the order was made;

(c) if the order is subject to a condition;

Note See r 2014 (Enforcement—conditional orders).

(d) if enforcement is sought as mentioned in rule 2006 (3) (Enforcement—order in partnership name);

(e) for a money order—if there has been any change in the enforcement creditor or enforcement debtor, whether by assignment, death or otherwise;

(f) if the order is for delivery of possession of land and a person other than the person against whom the original order for possession of land was made is in possession of the land or part of it;

Note See r 2452 (2) (Orders for delivery of possession of land—preconditions).

(g) if the order is against property in the hands of a receiver appointed by the court;

(h) if the order is against property in the hands of a sequestrator;

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(i) if the order is against a future asset of the enforcement debtor;

(j) if the proceeding is an application for an enforcement order in aid of another enforcement order.

Note The *Limitation Act 1985*, s 14 makes provision for a 12 year limitation period in relation to the bringing of an action on a cause of action on a judgment.

(2) An application for leave to start an enforcement proceeding need not be served on anyone unless the court otherwise orders on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) An application for leave to start an enforcement proceeding must be accompanied by an affidavit in support of the application.

(4) The affidavit in support must state—

(a) that the order has not been fully complied with; and

(b) the extent (if any) to which the order has been partly complied with; and

(c) that the applicant is entitled to enforce the order; and

(d) that the person against whom enforcement is sought is liable to comply with the order; and

(e) if it is more than 6 years since the day the order was made—the reasons for the delay; and

(f) for a money order—

(i) the amount (including any interest and costs) owing on the day the affidavit is made (the ***affidavit date***); and

(ii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

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(iii) if there has been a change in an enforcement creditor or enforcement debtor—the change that has happened.

(5) The affidavit must be sworn not earlier than 2 days before the day the application for leave is filed in the court.

2013 Enforcement—stay

(1) On application by the enforcement debtor or other person liable to comply with an enforceable money order or non-money order of the court or by someone else affected by the order, the court may—

(a) by order, stay the enforcement of all or part of the order, including because of facts arising or discovered after the order was made; and

(b) make the orders it considers appropriate, including, for a money order, an instalment order.

Note 1 Rule 2150 (Instalment order—making) provides for the making of instalment orders.

Note 2 See also r 2208 (Seizure and sale order—application for instalment order stays sale of seized property).

Note 3 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) The application may be made whether or not an enforcement order has already been made for the enforceable money order or non-money order.

(3) The application must be accompanied by an affidavit in support of the application.

(4) Unless the court otherwise orders, the filing of the application does not stay the operation of the order.

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2014 Enforcement—conditional orders

(1) An order of the court subject to a condition may be enforced only if the condition is satisfied.

Note 1 ***Order*** is defined in the dictionary to include judgment (see also def ***made***).

Note 2 The court's leave is also required (see r 2012 (1) (c)).

(2) Unless the court otherwise orders, if a person fails to satisfy a condition the court has included in an order, the person entitled to the benefit of the order loses the benefit.

(3) The court may order otherwise for subrule (2) on an application made before or after the time to satisfy the condition has passed.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(4) If subrule (2) applies to an order, then, unless the court otherwise orders, any interested person may take any steps—

(a) that are justified by the order; or

(b) that might have been taken if the order had not been made.

2015 Enforcement—service of order and related information

(1) Before an enforcement proceeding can be started for an enforceable money order or non-money order of the court, a sealed copy of the order and a notice in accordance with subrule (2) must be served on the enforcement debtor or other person liable to comply with the order.

Note See approved form 2.49 (Notice about Court order and enforcement options) AF2015-32.

(2) The notice mentioned in subrule (1) must include the following:

(a) details of the order, including whether it was obtained by default;

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(b) a summary of the enforcement options available to the enforcement creditor or other person entitled to enforce the order;

(c) a summary of the options available to the enforcement debtor or other person liable to comply with the order, including—

(i) if the order was obtained by default—that application can be made to set the order aside; and

(ii) for a money order—that application can be made for an instalment order;

(d) information about where the enforcement debtor or other person liable to comply with the order may be able to obtain legal or financial advice and assistance in relation to the order.

(3) An enforcement proceeding may not be started before the end of 7 days after the day the copy of the order and the notice are served on the enforcement debtor.

(4) In this rule:

order includes a certificate of registration given under rule 2010A.

Division 2.18.2 Enforcement orders—general

2050 Enforcement orders—content and issue

(1) An enforcement order must state—

(a) for a money order—

(i) the name of the enforcement debtor; and

(ii) the amount recoverable under the order; and

(iii) for an enforcement order to which rule 2052 applies—the date the order ends; and

Note Certain enforcement orders must end not later than 1 year after they are made (see r 2052 (2)).

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(b) for a non-money order—what is authorised under the order; and

(c) any other details required under these rules.

Note For other details required under these rules, see the following rules:

- r 2333 (Regular redirection order—content)
- r 2355 (Earnings redirection order—content).

(2) For subrule (1) (a) (ii), the amount recoverable must include—

(a) unless the court otherwise orders—

(i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and

(ii) the unpaid interest on those costs; and

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(b) the costs relating to the enforcement order; and

(c) the amount of interest on the order debt.

(3) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to an enforcement officer to be enforced:

(a) a seizure and sale order;

(b) an order for delivery of possession of land;

(c) an order for seizure and delivery of goods;

(d) an order for seizure and detention of property;

(e) an order issuing an arrest warrant or arrest and detention warrant under division 2.18.16 (Contempt).

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(4) If the court makes any of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor to be enforced:

(a) a debt redirection order;

(b) a regular debt redirection order;

(c) an earnings redirection order.

(5) If the court makes either of the following enforcement orders, the registrar must give a sealed copy of the order to the enforcement creditor:

(a) a charging order;

(b) an order under division 2.18.10 relating to amounts or securities in court.

(6) If the court makes an order under division 2.18.11 appointing a receiver, the registrar must give a sealed copy of the order to the receiver.

2051 Enforcement orders—application to set aside

(1) This rule applies if an enforcement order is made for an enforceable money order or non-money order (the ***original order***) of the court.

(2) On application by the enforcement debtor or other person liable to comply with the original order or by someone else affected by the enforcement order, the court may—

(a) set the enforcement order aside; and

(b) make the orders it considers appropriate, including, for an enforceable money order, an instalment order.

Note 1 A person liable to comply with the original order may also seek a stay under r 2013.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) Unless the court otherwise orders, the filing of the application does not stay the operation of the enforcement order.

2052 Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers

(1) This rule applies to the following enforcement orders:

(a) a seizure and sale order;

(b) an order for delivery of possession of land;

(c) an order for seizure and delivery of goods;

(d) an order for seizure and detention of property.

(2) The enforcement order remains in force for 1 year after the day it is made unless the order states that it ends at an earlier time.

Note 1 A seizure and sale order may be extended under r 2222 (Seizure and sale order—postponement of sale).

Note 2 The ending of a seizure and sale order under this rule does not affect any agreement for sale etc entered into before the order ends (see r 2228 (Seizure and sale order—effect of ending of order on completion of sale etc)).

(3) However, the order may be renewed for further periods of not longer than 1 year at a time.

(4) An application for renewal of an enforcement order—

(a) must be made before the order ends; and

(b) is made by filing in the court—

(i) a request for the order to be renewed for a stated period of not longer than 1 year; and

(ii) an affidavit setting out—

(A) the matters required to be included in the affidavit in support of an application for an enforcement order of that kind; and

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(B) the reasons why the order has not been enforced during the period that the order has been in force.

(5) Part 6.2 (Applications in proceedings) does not apply to the application.

(6) The request and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(7) Unless the court otherwise orders on its own initiative, an application for renewal of an enforcement order must be dealt with without a hearing and in the absence of the parties.

(8) If the court renews an enforcement order, the registrar must give a sealed copy of the order as renewed to an enforcement officer to be enforced.

(9) A renewed enforcement order must be stamped with the seal of the court to show the period for which the order is renewed.

(10) The priority of a renewed enforcement order is decided according to the date the enforcement order was originally made.

(11) The production of an enforcement order purporting to be stamped with the seal of the court and showing the period for which the order has been renewed is sufficient evidence for all purposes of the order having been renewed for the period.

2053 Enforcement orders—return by enforcement officer

(1) The registrar may require an enforcement officer who is given an enforcement order to enforce—

(a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and

(b) to send a copy of the order with the attached statement to the person who obtained the order; and

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(c) to file in the court a copy of the order with the attached statement.

Note An enforcement officer may also be required to give a report under r 2234 (Seizure and sale order—report by enforcement officer).

(2) A person who obtains a seizure and sale order that is given to an enforcement officer to enforce may require the enforcement officer—

(a) to attach to a copy of the order a statement of the steps the enforcement officer has taken under the order; and

(b) to send a copy of the order with the attached statement to the person; and

(c) to file in the court a copy of the order with the attached statement.

2054 Enforcement orders—priority

(1) The precise time an application for an enforcement order is made must be written on the application by the registrar.

(2) If more than 1 application for an enforcement order against the same person is made to the court, the court must make the orders in order of the times written on the applications.

(3) The precise time an enforcement order is made must be written on the order by the registrar.

(4) If more than 1 enforcement order against the same person is given to an enforcement officer, the enforcement officer must enforce the orders in order of the times written on the orders.

(5) In this rule:

precise time means the hour, day, month and year.

2055 Enforcement orders—payment under order

A payment under an enforcement order discharges the person making the payment to the extent of the payment.

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2056 Enforcement orders—orders about enforcement

(1) The court may make the orders in aid of, or otherwise in relation to, the enforcement of its orders that it considers appropriate.

(2) Without limiting subrule (1), the court may make the following orders:

(a) an order authorising an enforcement officer to enter premises to take possession of property under a seizure and sale order;

(b) an order prohibiting an enforcement officer from taking any further action on an enforcement order;

(c) an order prohibiting anyone else from taking any further action, either permanently or until a stated day, to enforce an order of the court.

(3) The court's powers under this rule are additional to its powers under any other territory law.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 For other provisions about entry to premises, see r 2203 (Seizure and sale order—entry, search and seizure powers if no consent) and r 2219 (Seizure and sale order—power of entry for auction of land).

2057 Enforcement orders—consecutive and concurrent orders

To remove any doubt, this part does not prevent the court—

(a) from making consecutive seizure and sale orders against the same enforcement debtor, or making consecutive debt redirection orders, regular redirection orders, earnings redirection orders or charging orders in relation to the same enforcement debtor, in relation to the same order debt; or

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(b) from making concurrent debt redirection orders, regular redirection orders or earnings redirection orders against different entities, or consecutive debt redirection orders, regular redirection orders or earnings redirection orders against the same entity, in relation to the same order debt.

2058 Enforcement orders—deceased enforcement debtor

If a money order is to be enforced against the estate of a deceased enforcement debtor, only the assets of the estate are subject to the enforcement.

Division 2.18.3 Enforcement of money orders—enforcement hearings

2100 Enforcement hearing—application by enforcement creditor

(1) An enforcement creditor for an enforceable money order of the court may apply to the court for an enforcement hearing.

(2) However, unless the court otherwise orders, the enforcement creditor may not apply to the court for an enforcement hearing if any of the following orders is in force in relation to the enforceable money order:

(a) an instalment order;

(b) a debt redirection order;

(c) a regular redirection order;

(d) an earnings redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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(3) An application under this rule for an enforcement hearing is made by filing in the court—

(a) a draft order requiring the enforcement debtor to attend an enforcement hearing; and

(b) an affidavit in support of the application.

Note See approved form 2.50 (Order to attend enforcement hearing) AF2006-295.

(4) The affidavit in support must state—

(a) the date the money order was made; and

(b) the amount of the order debt; and

(c) the date and amount of each payment (if any) made under the money order; and

(d) the costs incurred in previous enforcement proceedings in relation to the money order; and

(e) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(f) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(g) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and

(h) the last-known address of the enforcement debtor; and

(i) if the enforcement creditor has conducted a company name search or business name search in relation to the enforcement debtor—the results of the search.

(5) Part 6.2 (Applications in proceedings) does not apply to the application.

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(6) The affidavit and draft order need not be served on the enforcement debtor unless the court otherwise orders on its own initiative.

(7) Unless the court otherwise orders on its own initiative, the application must be dealt with without a hearing and in the absence of the parties.

2101 Enforcement hearing—otherwise than on enforcement creditor's application

(1) This rule applies if the enforcement creditor or enforcement debtor for an enforceable money order of the court applies to the court for any order under this part in relation to the money order.

(2) On application by the enforcement debtor by notice given to the court or on its own initiative, the court may order that an enforcement hearing be held to decide whether to make the order applied for.

Note See approved form 2.50 (Order to attend enforcement hearing) AF2006-295.

(3) Part 6.2 (Applications in proceedings) does not apply to an application by an enforcement debtor.

2102 Enforcement hearing—limit on number of applications

(1) An enforcement creditor may apply to the court for, and the court may order, 2 or more enforcement hearings for an enforcement debtor, whether in relation to the same order debt or different order debts.

(2) However, the enforcement creditor must not make more than 1 application for an enforcement hearing for the enforcement debtor in relation to the same order debt within a 6-month period unless the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) An application for leave must be accompanied by an affidavit in support of the application.

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2103 Enforcement hearing—order for hearing etc

(1) If the court orders that an enforcement hearing be held, the court must—

(a) set a date for the enforcement hearing; and

(b) by subpoena (an ***enforcement hearing subpoena***), require the addressee for the subpoena—

(i) to complete, swear and file a statement of the enforcement debtor's financial position in accordance with rule 2106; and

(ii) to attend before the court, at the time and place stated in the order—

(A) to answer questions and give information; and

(B) to produce the documents or other things (if any) stated in the order.

Note 1 See approved form 2.51 (Enforcement hearing subpoena) AF2006-296.

Note 2 An enforcement hearing subpoena may direct the addressee for the subpoena and the enforcement creditor to meet to attempt to settle payment of the order debt (see r 2108 (Enforcement hearing—meeting of parties)).

(2) The date set for the enforcement hearing must be at least 21 days after the day the enforcement hearing subpoena is issued.

(3) To remove any doubt—

(a) the court may, by enforcement hearing subpoena, require 2 or more people to attend before the court, at the same time and place, in relation to an order debt; and

(b) part 6.9 (Subpoenas) applies to an enforcement hearing subpoena with any necessary changes and any changes provided by these rules.

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2104 Enforcement hearing—who may be directed to attend by enforcement hearing subpoena

An enforcement hearing subpoena in relation to an enforcement debtor may be directed to—

(a) the enforcement debtor; or

(b) if the enforcement debtor is a partnership (including an incorporated limited partnership)—a partner or a person who has or had the control or management of the partnership business in the ACT; or

Note A ***partner*** includes a former partner (see r 2000).

(c) if the enforcement debtor is an incorporated association—a member or former member of the committee, or a public officer or former public officer, of the association; or

(d) if the enforcement debtor is a cooperative—a member or former member of the board of directors, or a secretary or former secretary, of the cooperative; or

(e) if the enforcement debtor is an owners corporation under the *Unit Titles Act 2001*—an executive member, or former executive member, of the executive committee of the owners corporation; or

(f) if the enforcement debtor is a body corporate under the *Community Title Act 2001*—a member or former member of the committee of management, or a manager or former manager, of the body corporate; or

(g) if the enforcement debtor is a corporation (including a corporation mentioned in paragraphs (b) to (f))—any senior officer of the corporation.

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2105 Enforcement hearing—service of enforcement hearing subpoena

(1) An enforcement hearing subpoena must be served on the addressee for the subpoena at least 14 days before the date set for the enforcement hearing.

(2) A copy of the form of the statement to be completed in accordance with rule 2106 must be served with the enforcement hearing subpoena.

Note The addressee is not required to comply with the subpoena unless conduct money is given to the addressee a reasonable time before attendance is required (see r 6606 (1)).

2106 Enforcement hearing—statement of enforcement debtor's financial position

(1) At least 8 days before the date set for the enforcement hearing, the addressee for the enforcement hearing subpoena must file in the court a sworn statement of the enforcement debtor's financial position.

Note See approved form 2.52 (Statement of enforcement debtor's financial position) AF2006-297.

(2) If the enforcement debtor receives regular payments (for example, wages or social security benefits), the statement of financial position must include—

(a) the dates the last 4 payments were received; and

(b) if the payments were paid to the enforcement debtor by payment into an account with a financial institution—a statement to that effect, and the account number and any other details necessary to identify the account.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The registrar must give a copy of the statement to the enforcement creditor at least 5 days before the date set for the enforcement hearing.

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(4) If the enforcement creditor is satisfied with the information in the statement, the enforcement creditor may give notice to the addressee for the subpoena and the registrar that the addressee is no longer required to attend the enforcement hearing.

(5) If the enforcement hearing subpoena is issued by the court and the addressee for the subpoena, without reasonable excuse, contravenes the subpoena by failing to complete, swear or file a statement of the enforcement debtor's financial position in accordance with this rule, the addressee may be dealt with for contempt of court.

(6) Subrule (5) does not limit any other power of the court in relation to the contravention.

Note Failure to answer a question or give information in a legal proceeding may be an offence (see Criminal Code, s 722).

2107 Enforcement hearing—subpoena to other person

For an enforcement hearing in relation to an enforcement debtor, the court may issue a subpoena under part 6.9 to a person who has relevant knowledge about the circumstances of the enforcement debtor.

2108 Enforcement hearing—meeting of parties

(1) The court may direct the enforcement debtor and enforcement creditor to meet together to attempt to settle payment of the order debt.

Note An order (including a direction) may be made on the consent of the parties affected by the order (see r 1611 (Orders—by consent)).

(2) However, if the enforcement debtor or enforcement creditor asks, the court may direct the enforcement debtor and enforcement creditor to meet with a facilitator appointed by the court to attempt to settle payment of the order debt.

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(3) A direction under this rule—

(a) may be given in an enforcement hearing subpoena directed to the enforcement debtor and require the enforcement debtor and enforcement creditor to meet at a stated time and place before the enforcement hearing; or

(b) may be given during the enforcement hearing, on application by the enforcement debtor or enforcement creditor or on the court's own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction made during the enforcement hearing.

(4) Without limiting rule 6016 (Application in proceeding—oral application), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement debtor or enforcement creditor or on its own initiative.

(5) If a direction is given during the enforcement hearing, the court may adjourn the hearing to allow the parties to meet.

(6) The Legislation Act, part 19.3 (Appointments) does not apply to the appointment of a facilitator under this rule.

(7) If the court gives a direction to a person under this rule and the person, without reasonable excuse, contravenes the direction by failing to meet in accordance with the direction, the person may be dealt with for contempt of court.

(8) Subrule (7) does not limit any other power of the court in relation to the contravention.

2109 Enforcement hearing—examination

(1) This rule applies if a person—

(a) attends before the court at an enforcement hearing on an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person); or

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(b) is brought before the court on an enforcement hearing warrant; or

(c) otherwise attends by arrangement before the court.

(2) The person may—

(a) be examined orally on oath about—

(i) the assets, liabilities, expenses and income of the enforcement debtor; and

(ii) any other means the debtor has of satisfying the debt; and

(iii) the debtor's financial circumstances generally; and

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(b) be required, by order, to produce any document substantiating anything relevant to—

(i) the assets, liabilities, expenses and income of the enforcement debtor; and

(ii) any other means the debtor has of satisfying the debt; and

(iii) the debtor's financial circumstances generally.

(3) Unless the court otherwise orders, the examination may be conducted by the court and the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering, a direction or a decision under this rule.

(4) The examination may be conducted in open court or in the absence of the public, as the court directs.

(5) The court may adjourn an enforcement hearing from time to time and may, by order, require a person required to attend or attending the enforcement hearing (or an adjourned enforcement hearing) to attend an adjourned enforcement hearing (or a further adjourned enforcement hearing).

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(6) If the enforcement creditor has been told the date, time and place for the enforcement hearing (or adjourned enforcement hearing), but does not attend before the court, the court may—

(a) set aside the order for the enforcement hearing; or

(b) conduct the examination in the absence of the enforcement creditor.

(7) To remove any doubt, if subrule (6) applies, the court may make an order that it could make if that subrule did not apply.

(8) Without limiting rule 6016 (Application in proceeding—oral application), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement creditor or enforcement debtor or on its own initiative.

2110 Enforcement hearing—enforcement hearing warrant issue

(1) This rule applies if—

(a) a person is required—

(i) to attend an enforcement hearing by an enforcement hearing subpoena or a subpoena issued under rule 2107 (Enforcement hearing—subpoena to other person); or

(ii) to attend an adjourned enforcement hearing (or further adjourned enforcement hearing) by an order under rule 2109 (5) (Enforcement hearing—examination); and

(b) the person fails to attend the hearing as required by the order.

(2) The court may issue a warrant (an ***enforcement hearing warrant***) ordering an enforcement officer to apprehend the person and bring the person before the court to be examined at an enforcement hearing under rule 2109 if the court—

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(a) is satisfied that the person was served with the subpoena or was otherwise aware that the person was required by the enforcement hearing subpoena to attend the hearing as required by the subpoena; and

(b) considers that the person does not have a reasonable excuse for not attending the hearing.

Note See approved form 2.53 (Enforcement hearing warrant) AF2006-298.

(3) The court may issue the enforcement hearing warrant on application by the enforcement creditor or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an enforcement hearing warrant.

(4) However, the enforcement hearing warrant may only be issued by the judicial officer conducting the enforcement hearing.

(5) Also, the enforcement hearing warrant must not be issued earlier than 14 days or later than 3 months after the day the court has served notice on the person that failure to attend may result in the person's arrest.

(6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom an enforcement hearing warrant has been issued by the Magistrates Court.

2111 Enforcement hearing—enforcement hearing warrant contents etc

(1) An enforcement hearing warrant must—

(a) name, or otherwise describe, the person whose apprehension is required by the warrant; and

(b) state briefly the reason for its issue; and

(c) require an enforcement officer to arrest the person whose apprehension is required and bring the person before the court to be examined at an enforcement hearing under rule 2109; and

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(d) be expressed to end not later than 3 months after the day it is issued.

(2) For subrule (1) (c), the enforcement officer may enter and search any premises where the enforcement officer suspects, on reasonable grounds, the person to be using the force and assistance that is reasonable and necessary.

(3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the enforcement hearing warrant.

(4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

(5) The enforcement officer or a police officer may deliver the apprehended person to the person in charge of any correctional centre and that person must receive and keep the apprehended person in custody until the court or the enforcement officer otherwise directs.

(6) An enforcement hearing warrant continues in force until—

(a) the warrant is executed; or

(b) the warrant is set aside by the court and the enforcement officer is told that the warrant has been set aside; or

(c) the end of 3 months after the day it is issued.

(7) For subrule (6) (a), a warrant is executed when—

(a) the person whose apprehension is required has been examined at an enforcement hearing under rule 2109; or

(b) the examination is adjourned to another day; or

(c) the order for the enforcement hearing is set aside.

2112 Enforcement hearing—orders

(1) At the enforcement hearing, the court may—

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(a) issue an enforcement hearing warrant; or

Note Rule 2110 (2) deals with the issue of a warrant.

(b) make an instalment order for the order debt; or

Note Div 2.18.4 (Enforcement of money orders—instalment orders) provides for the making of instalment orders.

(c) make an order amending, suspending or setting aside an instalment order made for the order debt; or

Note See r 2160 (Instalment order—amending, suspending or setting aside).

(d) make an earnings redirection order; or

Note Div 2.18.8 (Enforcement of money orders—earnings redirection orders) applies to the making of earnings redirection orders.

(e) make an order amending, suspending or setting aside an earnings redirection order; or

Note See r 2360 (Earnings redirection order—amending, suspending or setting aside).

(f) make an order staying the enforcement of the money order; or

Note Rule 2013 (Enforcement—stay) provides for the stay of money orders on application.

(g) make another order about the enforcement of the order; or

(h) award costs on application by the enforcement creditor, the enforcement debtor or someone else required to attend the enforcement hearing by a subpoena or warrant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under par (g) and an application under par (h).

(2) Without limiting rule 6016 (Application in proceeding—oral application), an application at the enforcement hearing (including an application under this subrule) may be made orally, unless the court otherwise orders on application by the enforcement creditor or enforcement debtor or on its own initiative.

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(3) However, the court must not—

(a) make an instalment order at the enforcement hearing unless the enforcement debtor—

(i) had applied for the order under rule 2151; or

(ii) consents to the making of the order; or

(b) amend an instalment order at the enforcement hearing unless the enforcement debtor—

(i) had applied for the amendment under rule 2160; or

(ii) consents to the amendment.

(4) To remove any doubt, the court may set aside an instalment order at the enforcement hearing whether or not the enforcement debtor consents to the order being set aside.

(5) Also, unless the court otherwise orders, the costs of the enforcement hearing are costs of enforcement of the order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Division 2.18.4 Enforcement of money orders—instalment orders

2150 Instalment order—making

(1) The court may make an order (an ***instalment order***) authorising satisfaction of the amount payable under an enforceable money order of the court by instalment payments by the order debtor.

(2) The court may make an instalment order—

(a) on application by the enforcement debtor when making the money order; or

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(b) on application by the enforcement debtor or someone else under rule 2013 (Enforcement—stay) or rule 2051 (Enforcement orders—application to set aside); or

(c) on application by the enforcement debtor under rule 2151 or the enforcement creditor under rule 2153; or

(d) on the filing in the court of an instalment order agreement under rule 2157; or

(e) after hearing an application under rule 2314 (Debt redirection order—amending, suspending or setting aside); or

(f) after hearing an application under rule 2360 (Earnings redirection order—amending, suspending or setting aside).

Note For the making of an instalment order, see esp—

- r 2154 (Instalment order—relevant considerations)
- r 2156 (Instalment order—content and issue).

2151 Instalment order—application by enforcement debtor

(1) An application by an enforcement debtor for an instalment order is made by filing in the court—

(a) a sworn statement of the enforcement debtor's financial position; and

(b) a draft of the order sought.

Note 1 See approved form 2.54 (Instalment order) AF2006-299.

Note 2 Some applications by the enforcement debtor need leave (see r 2152).

Note 3 For the effect of the making of the application on a seizure and sale order, see r 2208 (Seizure and sale order—application for instalment order stays sale of seized property).

(2) Part 6.2 (Applications in proceedings) does not apply to the application.

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(3) The sworn statement and draft order mentioned in subrule (1) need not be served on anyone unless the court otherwise orders on its own initiative.

(4) Unless the court otherwise orders on its own initiative, an application for an instalment order by an enforcement debtor must be dealt with without a hearing and in the absence of the parties.

(5) To remove any doubt, this rule does not apply to an application by an enforcement debtor for an instalment order made—

(a) when making the money order; or

(b) under any of the following rules:

(i) rule 2013 (Enforcement—stay);

(ii) rule 2051 (Enforcement orders—application to set aside);

(iii) rule 2314 (Debt redirection order—amending, suspending or setting aside);

(iv) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

2152 Instalment order—when application by enforcement debtor requires leave

(1) The enforcement debtor may not make an application for an instalment order without the court's leave if—

(a) the enforcement debtor has made an application for an instalment order in relation to the same money order in the previous 6 months; or

(b) a previous instalment order made in relation to the same money order ceased to have effect under rule 2162 (Instalment order—ceasing to have effect for nonpayment).

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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(2) An application for leave must be accompanied by an affidavit in support of the application.

(3) In deciding whether to give leave under this rule, the court must have regard to the following matters:

(a) any change in the enforcement debtor's property or financial circumstances since the enforcement debtor last applied to the court for an instalment order for the order debt;

(b) the payments made by the enforcement debtor in discharge of the order debt;

(c) the enforcement action (if any) taken in relation to the order debt;

(d) the interests and attitudes of the parties;

(e) whether giving leave would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(4) Subrule (3) does not limit the matters to which the court may have regard.

2153 Instalment order—application by enforcement creditor

(1) An application by an enforcement creditor for an instalment order must be accompanied by—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note 1 See approved form 2.54 (Instalment order) AF2006-299.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

(2) The affidavit in support must state—

(a) the date the money order was made; and

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(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit made must be sworn not earlier than 2 days before the day the application is made.

(4) To remove any doubt, this rule does not apply to an application by the enforcement creditor for an instalment order under any of the following rules:

(a) rule 2013 (Enforcement—stay);

(b) rule 2051 (Enforcement orders—application to set aside);

(c) rule 2314 (Debt redirection order—amending, suspending or setting aside);

(d) rule 2360 (Earnings redirection order—amending, suspending or setting aside).

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2154 Instalment order—relevant considerations

(1) In deciding whether to make an instalment order on application by the enforcement creditor or enforcement debtor, the court must have regard to the following matters, as far as they are known to the court:

(a) whether the enforcement debtor is employed;

(b) the enforcement debtor's means of satisfying the order debt;

(c) whether the order debt, including any interest, will be satisfied within a reasonable time;

(d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(e) other liabilities of the enforcement debtor;

(f) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount and timing of the instalments, the court must be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the instalment order.

2155 Instalment order—stay of enforcement

(1) The filing of the first application for an instalment order in relation to an order debt operates to stay the enforcement of the order debt until the application is heard and decided.

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(2) However, the filing of a second or later application in relation to the order debt does not operate to stay the enforcement of the order debt unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2156 Instalment order—content and issue

(1) An instalment order for a money order must state—

(a) the amount recoverable under the money order; and

(b) the amount of the instalments and when they are payable under the instalment order.

(2) The amount recoverable must include—

(a) unless the court otherwise orders—

(i) the unpaid costs of any previous enforcement proceeding for the same money order (including any amounts recoverable under the *Service and Execution of Process Act 1992* (Cwlth)); and

(ii) the unpaid interest on those costs; and

(b) the costs relating to the instalment order; and

(c) the amount of interest on the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering under this rule.

(3) The instalment order must require payment of the instalments to be made to, or as directed from time to time by, the enforcement creditor unless the court otherwise orders.

(4) If the court makes an instalment order, or an order otherwise ordering under subrule (3), the registrar must give a sealed copy of the order to the enforcement creditor.

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(5) A direction under subrule (3) must be made by notice given to the enforcement debtor.

2157 Instalment order—instalment order agreement

(1) The enforcement creditor and enforcement debtor for an enforceable money order of the court may enter into an agreement (an ***instalment order agreement***)—

(a) stating—

(i) the amount agreed by them to be owing by the enforcement debtor to the enforcement creditor under the money order; and

(ii) by what instalments payable at what times the amount owing is to be paid; or

(b) revoking or amending an instalment order in force in relation to the money order.

Note See approved form 2.55 (Instalment order agreement) AF2006-300.

(2) An agreement has no effect unless it is signed by the enforcement creditor and enforcement debtor and each signature is witnessed.

(3) If an agreement in accordance with this rule is filed in the court, the court must make an instalment order—

(a) for an agreement under subrule (1) (a)—for the payment of the order debt by the instalments payable at the times stated in the agreement; or

(b) for an agreement under subrule (1) (b)—revoking or amending the instalment order as stated in the agreement.

Note See approved form 2.56 (Instalment order by agreement) AF2006-301.

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2158 Instalment order—service

(1) If the court makes an instalment order on the application of the enforcement creditor, the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.

(2) If the court makes an instalment order on the application of the enforcement debtor and in the absence of the enforcement creditor, the registrar must serve a sealed copy of the order on the enforcement creditor and the enforcement debtor.

(3) If the court makes an instalment order on the filing in the court of an instalment order agreement, the registrar must serve a sealed copy of the order on the enforcement creditor and the enforcement debtor.

2159 Instalment order—no other enforcement while in force

Unless the court otherwise orders—

(a) on the making of an instalment order for a money order, any other enforcement order in force in relation to the money order is automatically stayed; and

(b) while the instalment order is in force, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2160 Instalment order—amending, suspending or setting aside

(1) On application by the enforcement creditor or enforcement debtor (a ***party***), the court may make an order amending, suspending or setting aside an instalment order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) A party must not make more than 1 application for an order amending an instalment order within a 6-month period unless the court gives leave.

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(3) The enforcement creditor may make an application for an order amending an instalment order only if—

(a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the enforcement debtor—

(i) since the order was made; or

(ii) if the order has been amended—since the order was last amended; or

(b) when the order was made, amended or last amended, material facts had been withheld from the court or material evidence before the court was false.

(4) If—

(a) the court makes an order under subrule (1) on the application of the enforcement creditor; and

(b) the enforcement debtor was not before the court when the order was made;

the enforcement creditor must serve a sealed copy of the order on the enforcement debtor.

(5) If—

(a) the court makes an order under subrule (1) on the application of the enforcement debtor; and

(b) the enforcement creditor was not before the court when the order was made;

the registrar must serve a sealed copy of the order on the enforcement debtor.

(6) Unless the court otherwise orders, an order amending or suspending an instalment order does not come into force until the end of 7 days after—

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(a) the day the order is made; or

(b) if a sealed copy of the order is required to be served under subrule (4) or (5)—the day the order is served.

2161 Instalment order—ceasing to have effect other than for nonpayment

(1) An instalment order ceases to have effect if—

(a) the order debt is satisfied; or

(b) the instalment order is set aside or ends in accordance with its terms; or

(c) unless the court otherwise orders, another enforcement order is made in relation to the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) If an instalment order ceases to have effect under subrule (1), otherwise than because of an order made in the presence of the enforcement debtor, the enforcement creditor must give notice to the enforcement debtor that the instalment order has ceased to have effect.

Note See approved form 2.57 (Instalment order-notice of cessation other than for nonpayment) AF2006-302.

(3) The enforcement creditor must file a copy of the notice in the court.

2162 Instalment order—ceasing to have effect for nonpayment

(1) An instalment order ceases to have effect if—

(a) the enforcement debtor fails to make 2 consecutive payments under the order at the times required by the order; and

(b) the enforcement creditor files in the court an affidavit stating that fact.

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(2) If an instalment order ceases to have effect under subrule (1), the enforcement creditor must serve on the enforcement debtor—

(a) a stamped copy of the affidavit; and

(b) a notice telling the enforcement debtor that the instalment order has ceased to have effect.

Note See approved form 2.58 (Instalment order-notice of cessation for nonpayment) AF2006-303.

(3) The enforcement creditor must file a copy of the notice in the court.

2163 Instalment order—record of payments

(1) If an instalment order is made for an order debt, the enforcement creditor must make a record of the amount and date of each instalment paid by the enforcement debtor under the instalment order to, or as directed by, the enforcement creditor.

(2) The enforcement creditor must keep the record for at least 6 years after the day the last instalment is paid by the enforcement debtor under the instalment order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.

(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

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(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 2.18.5 Enforcement of money orders—seizure and sale orders

2200 Seizure and sale order—making

(1) On application by the enforcement creditor for an enforceable money order of the Supreme Court, the Supreme Court may make an order (a ***seizure and sale order***) authorising an enforcement officer to seize and sell in satisfaction of the order debt all real and personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest.

(2) On application by the enforcement creditor for an enforceable money order of the Magistrates Court, the Magistrates Court may make an order (also a ***seizure and sale order***) authorising an enforcement officer to seize and sell in satisfaction of the order debt all personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest.

Note See r 2050 (Enforcement orders—content and issue) for provisions about the content and issue of the order.

2201 Seizure and sale order—application

(1) An application for a seizure and sale order is made by filing in the court—

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(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.59 (Seizure and sale order) AF2006-304.

(2) The affidavit in support must state—

(a) the date the money order was made; and

(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any addresses where property belonging to the enforcement debtor may be located; and

(k) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

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(4) Part 6.2 (Applications in proceedings) does not apply to the application.

(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application for a seizure and sale order must be dealt with without a hearing and in the absence of the parties.

2202 Seizure and sale order—additional exempt property

(1) On application by the enforcement debtor for an enforceable money order of the court, the court may order that stated property of the enforcement debtor is exempt from seizure under a seizure and sale order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The court must not make an order under subrule (1) unless satisfied that the enforcement debtor or any of the enforcement debtor's dependants would be likely to suffer exceptional hardship if the order were not made.

(3) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may amend or set aside an order under subrule (1).

2203 Seizure and sale order—entry, search and seizure powers if no consent

(1) This rule applies if, in executing a seizure and sale order—

(a) an enforcement officer is refused entry to the enforcement debtor's premises, after having told or made reasonable attempts to tell the occupier (orally or in writing)—

(i) about the procedure for execution of the order; and

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(ii) that the enforcement officer intends to apply for an order for entry under this rule if entry is refused; or

(b) an enforcement officer—

(i) has made reasonable attempts to contact the enforcement debtor and any other occupier of the enforcement debtor's premises to obtain consent to enter the premises; and

(ii) has been unable to make contact with the enforcement debtor or any other occupier of the premises.

(2) At the request of the enforcement officer, the court may make an order authorising the enforcement officer, for any purpose connected with executing the seizure and sale order, to enter the enforcement debtor's premises—

(a) using the force and assistance that is reasonable and necessary; and

(b) with the assistance of a police officer or police officers if the enforcement officer considers the assistance to be necessary.

(3) Without limiting subrule (2), an order under that subrule is sufficient authority for the enforcement officer—

(a) to search the enforcement debtor's premises for anything that the enforcement officer is entitled to seize in execution of the seizure and sale order; and

(b) to seize and remove anything the enforcement officer is entitled to seize in execution of the seizure and sale order.

(4) The court must not make an order under subrule (2) in relation to premises unless satisfied that—

(a) the enforcement debtor lives at the premises; or

(b) something the enforcement officer is entitled to seize is at the premises; or

(c) the enforcement officer is entitled to sell the premises.

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(5) An enforcement officer is not civilly liable for anything done or omitted to be done honestly and without recklessness in executing an order under subrule (2).

(6) This rule does not limit any other power of an enforcement officer or the court in relation to the execution of an enforcement order.

(7) In this rule:

enforcement debtor's premises means premises occupied by the enforcement debtor.

2204 Seizure and sale order—assistance to enforcement debtor

(1) If it appears to the enforcement officer executing a seizure and sale order that the enforcement debtor does not properly understand the nature of the order (for example, for language or cultural reasons or because of a disability), the enforcement officer must—

(a) give the enforcement debtor written information about where the enforcement debtor may be able to obtain legal or financial advice and assistance in relation to the order; and

(b) if the enforcement debtor has difficulty understanding the English language—seek the assistance of an interpreter to explain the situation to the enforcement debtor and ensure the enforcement debtor understands the information given under paragraph (a).

Note 1 See approved form 2.60 (Notice to enforcement debtor about seizure and sale order) AF2006-305.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Further action may not be taken to execute the seizure and sale order before the end of 7 days after the day the information is given to the enforcement debtor.

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(3) The costs of complying with this rule are costs of enforcement of the seizure and sale order.

2205 Seizure and sale order—notice of order

(1) This rule applies if—

(a) an enforcement officer enters premises for the first time for the purpose of executing a seizure and sale order; or

(b) an enforcement officer seizes personal property under a seizure and sale order for the first time at a place.

(2) If subrule (1) (a) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—

(a) the enforcement debtor; or

(b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the premises is present—that person.

(3) If subrule (1) (b) applies, the enforcement officer must give a sealed copy of the seizure and sale order to—

(a) the enforcement debtor; or

(b) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to be in possession of the seized property is present—that person.

(4) If there is no-one present at the premises or place who can be given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must leave a sealed copy of the order, secured conspicuously, at the premises or place.

(5) However, subrule (4) does not require the enforcement officer to leave a sealed copy of the order in a public place.

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(6) If the enforcement debtor is not given a sealed copy of the seizure and sale order under subrule (2) or (3), the enforcement officer must serve a sealed copy of the order on the enforcement debtor—

(a) if the enforcement debtor has an address for service—at the enforcement debtor's address for service; or

(b) in any other case—in the same way that an originating process filed in the court to recover the debt may be served on the enforcement debtor under these rules.

(7) However, this rule does not require a sealed copy of the seizure and sale order to be given to or served on the enforcement debtor if the enforcement debtor has already been given or served with a sealed copy of the order.

(8) In this rule:

premises includes the land around premises occupied by the enforcement debtor.

2206 Seizure and sale order—notice of property seized

(1) If an enforcement officer seizes personal property at a place under a seizure and sale order, the enforcement officer must—

(a) make an inventory of the seized property that is sufficient to identify it; and

(b) give notice of the seizure and a copy of the inventory to—

(i) the enforcement debtor; or

(ii) if the enforcement debtor is not present but a person who appears to be at least 16 years old and to live or be employed at the place, or to be in possession of the property, is present—that person.

Note See approved form 2.61 (Notice of seizure and inventory of property under seizure and sale order) AF2006-306.

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(2) The notice must include the following information:

(a) the amount (including any amount payable for interest and costs) required to satisfy the order debt;

(b) that application may be made under rule 2202 for an order exempting particular property from sale under the seizure and sale order;

(c) a summary of the process that is followed for sale of property under a seizure and sale order.

(3) If there is no-one present at the place who can be given the notice and a copy of the inventory, the enforcement officer must leave the notice and a copy of the inventory, secured conspicuously, at the place.

(4) However, subrule (3) does not require the enforcement officer to leave the notice and a copy of the inventory in a public place.

2207 Seizure and sale order—removal etc of seized property

(1) If an enforcement officer seizes personal property, the enforcement officer must consider how best to secure and preserve the property.

(2) The enforcement officer may—

(a) remove the property from the premises or place where the property was seized; or

(b) leave the property where it is but restrict access to it or otherwise mark the property as having been seized.

(3) If the enforcement officer leaves the property where it is, the enforcement officer must tell the enforcement debtor or anyone else who has custody of the property, in writing, that the property has been seized under a seizure and sale order and that the person is responsible for its safekeeping.

(4) The enforcement creditor is liable to pay any storage expenses but may recover them as costs of enforcement.

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2208 Seizure and sale order—application for instalment order stays sale of seized property

(1) This rule applies if—

(a) property is seized under a seizure and sale order in relation to an enforceable money order of the court; and

(b) the enforcement debtor makes an application to the court for an instalment order in relation to the money order.

Note Rule 2150 (Instalment order—making) provides for the making of instalment orders.

(2) The property must not be sold until the court decides the application.

(3) If the court refuses to make an instalment order on the application, the court may order a stay of sale of the property until any appeal on the application is finally decided.

2209 Seizure and sale order—property seized not abandoned

If an enforcement officer seizes property at premises under a seizure and sale order—

(a) the enforcement officer is not taken to have abandoned the property if the enforcement officer leaves the property at the premises; and

(b) the enforcement officer may at all reasonable times re-enter the premises while the property is there.

2210 Seizure and sale order—seizure of real property

(1) This rule applies if an enforcement creditor asks an enforcement officer to seize real property under a seizure and sale order.

(2) The enforcement officer is taken to have seized the real property for these rules if the enforcement officer gives the enforcement debtor—

(a) a sealed copy of the seizure and sale order; and

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(b) a copy of a notice that the enforcement officer is instructed to seize and sell the real property.

(2) Actual seizure is not necessary to authorise the sale of real property under a seizure and sale order.

2211 Seizure and sale order—enforcement debtor not to deal with real property

(1) After being given a copy of a notice about real property under rule 2210, the enforcement debtor must not sell, transfer or otherwise deal with the property without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(2) The courts may set aside or restrain any sale, transfer or other dealing in contravention of this rule, unless to do so would prejudice the rights of a genuine purchaser without notice.

2212 Seizure and sale order—order of seizing and selling property

(1) An enforcement officer must seize and sell property under a seizure and sale order—

(a) in the order appearing to the enforcement officer to be best for the prompt enforcement of the order without unnecessary expense; and

(b) subject to paragraph (a), in the order appearing to the enforcement officer to be best for minimising hardship to the enforcement debtor or other people; and

(c) subject to paragraphs (a) and (b), by seizing and selling personal property before real property unless—

(i) the enforcement debtor asks for real property to be sold before personal property; or

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(ii) the court otherwise orders on application by the enforcement debtor, the enforcement creditor or the enforcement officer.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) An enforcement officer may seize and sell an item of property under a seizure and sale order even though its value appears to exceed the amount recoverable under the order, but must not seize or sell additional items of property.

2213 Seizure and sale order—payment before sale

An enforcement officer may not sell property seized under a seizure and sale order if, at or before the sale, the enforcement debtor or someone else pays to the enforcement officer—

(a) the amount owing under the order, including interest; and

(b) the costs of enforcement then known to the enforcement officer; and

(c) the amount set by the enforcement officer as security for the enforcement creditor's other costs of enforcement.

2214 Seizure and sale order—suspension etc of enforcement

(1) If property has not been seized under a seizure and sale order, the enforcement creditor may, in writing—

(a) require enforcement of the order to be suspended unconditionally; and

(b) if enforcement of the order has been suspended under these rules—require enforcement to be resumed.

(2) An enforcement officer must comply with a requirement made in accordance with this rule.

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2215 Seizure and sale order—agreements to withdraw and re-enter

(1) This rule applies if property has been seized under a seizure and sale order and the enforcement creditor—

(a) enters into an arrangement with the enforcement debtor that an enforcement officer may withdraw from and re-enter possession of the property; and

(b) tells the enforcement officer about the arrangement; and

(c) asks the enforcement officer to withdraw from possession of the property.

(2) The enforcement officer must withdraw from possession of the property and suspend enforcement of the seizure and sale order.

(3) However, the enforcement officer may, if asked in writing by the enforcement creditor, re-enter possession of the property and resume enforcement of the seizure and sale order.

(4) If property has been seized under a seizure and sale order and the enforcement creditor, without telling the enforcement officer about the arrangement mentioned in subrule (1), asks an enforcement officer to withdraw from possession or suspend enforcement of the order, other than for the purpose of postponing a sale for a reasonable time—

(a) the enforcement creditor is taken to have abandoned the enforcement of the order; and

(b) the enforcement officer must withdraw from possession of the property and return the order to the enforcement creditor.

(5) Subrule (4) does not apply if the court otherwise orders on application by the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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2216 Seizure and sale order—nature of sale

(1) Unless the court otherwise orders, an enforcement officer must put up for sale by public auction all property liable to be sold under a seizure and sale order—

(a) as early as possible, having regard to the interests of the enforcement creditor and the enforcement debtor (the ***parties***); and

(b) at a place and in a way appearing to the enforcement officer to be suitable for a beneficial sale of the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The property must not be sold before the end of 7 days after the day the property is seized unless—

(a) the enforcement debtor asks for the property to be sold before the end of the 7-day period; or

(b) the property is perishable.

(3) However, personal property must be sold within 12 weeks after the day it is seized.

(4) Before the property is sold by public auction, a party or the enforcement officer may apply to the court for an order that the property be sold privately.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(5) The application must be accompanied by an affidavit in support of the application.

(6) If the applicant is a party, the applicant must also serve a stamped copy of the application on the enforcement officer.

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(7) If, on application by the enforcement creditor, the court makes an order that the property be sold privately before a public auction, the court may order that the enforcement creditor pay any costs already incurred by the enforcement officer for the auction.

(8) Property sold by public auction must be sold under the following conditions of sale:

(a) for personal property, if the person conducting the auction considers the particular lot in which the property is to be auctioned is worth less than $500, or for other property if the enforcement debtor agrees—at the best price obtainable;

(b) otherwise, if the reserve is reached—to the highest bidder;

(c) if the person conducting the auction considers there is a dispute as to who is the highest bidder, the property is to be reauctioned and knocked down to the highest bidder.

(9) If property put up for sale at public auction is not sold by auction, the enforcement officer may sell the property privately—

(a) for an amount not less than the highest bid made at the auction that the enforcement officer considers is a reasonable amount for the property; or

(b) if no bid was made at the auction—for an amount the enforcement officer considers is a reasonable amount for the property; or

(c) in accordance with an order of the court under rule 2220 (Seizure and sale order—sale at best price obtainable).

(10) In this rule:

reserve, for a property to be sold at auction, means the reserve amount set by the enforcement officer that is an amount the enforcement officer considers is not less than a reasonable amount for the property.

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2217 Seizure and sale order—setting reasonable amount

(1) To set an amount as a reasonable value of the property to be sold under a seizure and sale order, the enforcement officer—

(a) may engage a suitably qualified and experienced valuer to give the enforcement officer an opinion about the value of the property; and

(b) may require the enforcement creditor to provide any information about the property that the enforcement creditor knows or can reasonably obtain; and

(c) may seek any other information the enforcement officer considers appropriate.

(2) If the enforcement creditor fails to comply with the enforcement officer's request, the enforcement officer may refuse to proceed with the sale until the information is provided or the court otherwise orders on the application of the enforcement creditor.

Note Pt 6.2 (Applications in proceedings) applies to an application by the enforcement creditor.

(3) The enforcement officer's costs under this rule are costs of enforcement of the seizure and sale order.

(4) The enforcement officer may communicate the amount set as a reasonable value of property to be sold to any person before the sale only if the communication is necessary to conduct the sale or there is another sufficient excuse.

2218 Seizure and sale order—additional provisions relating to land

(1) This rule applies if land is to be sold under a seizure and sale order.

(2) An enforcement officer may appoint a real estate agent to market the land and conduct the sale.

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(3) The agent's costs in marketing and selling the land are costs of enforcing the seizure and sale order.

(4) The enforcement officer or appointed real estate agent may postpone the sale of the land if the officer or agent considers that an immediate sale would result in a sacrifice of the value of the land.

(5) The enforcement officer must—

(a) search the title of the land for any encumbrances; and

(b) make inquiries about the outstanding value of any encumbrances.

(6) The enforcement officer must take the value of any encumbrances into account in setting the reserve price of the property.

(7) On application by the enforcement officer, the court may make any order it considers appropriate in aid of the sale of the land under the seizure and sale order, including, for example, an order for the disclosure of the amount owing under an encumbrance on the land.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (7).

(9) An application under subrule (7) need not be served on anyone unless the court otherwise orders on its own initiative.

(10) Unless the court otherwise orders on its own initiative, an application under subrule (7) must be dealt with without a hearing and in the absence of the parties.

(11) If the court makes an order under subrule (7), the registrar must give a sealed copy of the order to the enforcement creditor and enforcement debtor.

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2218A Seizure and sale order—appointment of real estate agent

(1) For rule 2218 (2), an enforcement officer may appoint a real estate agent

(a) after—

(i) seeking expressions of interest from real estate agents to market the land and conduct the sale; and

(ii) considering any expressions of interest received, and the qualifications and experience of an agent who expresses an interest; or

(b) from a panel established under subrule (2).

(2) The sheriff may establish a panel of real estate agents with appropriate qualifications and experience to market and sell land under a seizure and sale order.

(3) For subrule (2), the sheriff must—

(a) call for expressions of interest from real estate agents who wish to be included on the panel; and

(b) may arrange for enforcement officers to appoint agents from the panel—

(i) on rotation; or

(ii) because the agent's business is concentrated in the area where land to be sold is situated; or

(iii) for any other reason the sheriff considers relevant.

(4) An expression of interest from a real estate agent must include the agent's fees or other remuneration, and the agent's proposed arrangements, for the marketing and sale of land under this rule.

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2219 Seizure and sale order—power of entry for auction of land

(1) If land is to be sold by public auction, the court may, on application by an enforcement officer, make an order—

(a) authorising entry onto the land by the enforcement officer (including entry by force if necessary) for the purpose of showing the land to prospective purchasers; and

(b) authorising entry onto the land by prospective purchasers in the presence of the enforcement officer.

(2) The order may also authorise the enforcement officer to do either or both of the following:

(a) secure entry onto the land (including by breaking or replacing locks, bars and other devices restricting entry, if necessary);

(b) take the steps necessary to prevent people from entering the land.

(3) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(4) An application under this rule need not be served on anyone unless the court otherwise orders on its own initiative.

(5) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

(6) This rule does not affect any other power of the court to make orders.

(7) In this rule:

land includes premises on land.

2220 Seizure and sale order—sale at best price obtainable

(1) This rule applies if the property seized under a seizure and sale order is not sold under rule 2216 (Seizure and sale order—nature of sale).

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(2) The enforcement officer or enforcement creditor may apply to the court for an order to sell the property at the best price obtainable.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The application must be accompanied by an affidavit, or a report by the enforcement officer, in support of the application giving details of the required steps for sale that have been taken.

(4) A copy of the application and affidavit must be served on the enforcement debtor and any other interested party.

2221 Seizure and sale order—advertisement of sale

(1) Before selling property seized under a seizure and sale order, an enforcement officer must arrange advertisement of a notice giving—

(a) the time and place of sale; and

(b) details of the property to be sold.

(2) The notice must be published in a daily newspaper circulating generally in the ACT on 2 different days.

(3) Both of the days mentioned in subrule (2) must be not more than 4 weeks before the day of the sale and at least 1 of the days must be not less than 2 weeks before the day of the sale.

(4) However, the enforcement officer may sell the seized property without arranging the advertisements if—

(a) the property is perishable; or

(b) the enforcement debtor asks in writing for the property to be sold without the advertisements and the enforcement creditor consents.

(5) Also, if the seized property is put up for sale at a public auction to be conducted by someone other than an enforcement officer—

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(a) it is sufficient for the notice to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and

(b) advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and

(c) an enforcement officer may require any other advertising the enforcement officer considers reasonable.

(6) At least 48 hours before the day of the auction, the enforcement officer must serve on the enforcement debtor a notice stating the date, time and place of the auction and the property to be auctioned.

(7) The advertisement must not contain any statement to the effect, or from which it can be inferred, that the auction is of property seized under a seizure and sale order.

2222 Seizure and sale order—postponement of sale

(1) On application by an enforcement officer, the enforcement creditor or the enforcement debtor, the court may order that the sale of property seized under a seizure and sale order be postponed to a stated date.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) For a sale of personal property, the stated date must not be later than 12 weeks after the day the property was seized unless the court otherwise orders.

(3) If the order authorising the sale would otherwise end before the stated date, the postponement automatically extends the order until the end of the stated date.

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2223 Seizure and sale order—amounts received

(1) An enforcement officer must pay to the registrar all proceeds of sale and other amounts received by the enforcement officer under a seizure and sale order.

(2) From the amounts received from the enforcement officer, the registrar must—

(a) pay the enforcement officer's fees and costs of enforcement (including any costs of valuing and advertising property); and

(b) pay any balance, up to the amount recoverable under the seizure and sale order, to the enforcement creditor; and

(c) pay any remaining balance to the enforcement debtor.

(3) If the enforcement officer receives seizure and sale orders in relation to more than 1 enforcement creditor, the enforcement creditors must be paid from the proceeds of sale in the order in which the seizure and sale orders were received by the enforcement officer.

(4) The registrar must give the enforcement debtor and enforcement creditor an account showing how the amounts received have been paid.

2224 Seizure and sale order—terms about payment

(1) An enforcement officer must sell property seized under a seizure and sale order on terms that the purchaser of an item of the property—

(a) must pay—

(i) 10% of the purchase price as a deposit immediately after the sale; and

(ii) the balance of the purchase price within the period (not longer than 2 days after the day of the sale) that the enforcement officer decides before the sale; or

(b) must pay all the purchase price immediately after the sale.

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(2) An enforcement officer must require payment of the purchase price to be in cash or by bank draft, electronic funds transfer, debit card or credit card.

(3) If payment is made by electronic funds transfer, debit card or credit card, any charge made for the payment must be included in the costs of enforcement.

2225 Seizure and sale order—securities held by enforcement officer

(1) This rule applies if an enforcement officer seizes a cheque, bill of exchange, promissory note, bond, specialty, or another security for money, (the ***seized document***) under a seizure and sale order.

(2) The enforcement officer holds the seized document as security for the amount to be recovered under the seizure and sale order for the benefit of the enforcement creditor.

(3) The enforcement officer may sue in the officer's own name for, and recover, an amount payable under the seized document from the person liable under it.

(4) Payment to the enforcement officer of an amount payable under the seized document discharges the person liable under the document to the extent of the payment.

2226 Seizure and sale order—personal property subject to conditional bill of sale

(1) This rule applies if personal property subject to a seizure and sale order is in the enforcement debtor's possession and is also subject to a conditional bill of sale.

(2) An enforcement officer may sell the enforcement debtor's interest in the property without taking possession of it.

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(3) On receiving written notice that a person (the ***purchaser***) has purchased the interest, the person having the benefit of the bill of sale (the ***holder of the bill***) may take possession of the property.

(4) If the holder of the bill takes possession of the property, the holder is taken to hold it for the use of the purchaser, subject to the purchaser's payment of any amounts payable under the bill of sale.

(5) If the property is later sold under the bill of sale and any surplus remains from the proceeds of sale after the debt to the holder of the bill is satisfied, the holder must pay the surplus to the purchaser.

(6) This rule does not affect the right of the enforcement creditor to test the validity of the bill of sale by interpleader.

2227 Seizure and sale order—effect of sale of property

(1) A sale of property by an enforcement officer under this division is as valid as if the property had been sold to the purchaser by the enforcement debtor personally.

(2) In an instrument executed by an enforcement officer in relation to land, a statement in the instrument to the effect that—

(a) the land has been sold under a seizure and sale order; and

(b) the seizure and sale order was made for the enforcement of a money order made in a proceeding stated in the order;

is admissible in any proceeding as evidence of those facts.

2228 Seizure and sale order—effect of ending of order on completion of sale etc

Subject to any order made by the court under rule 2056 (Enforcement orders—orders about enforcement)—

(a) the ending of a seizure and sale order under rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers) does not

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affect any agreement for sale or other transaction entered into under the authority of the order before the order ends; and

(b) any action necessary to complete the sale or give effect to the transaction may be taken as if the order were still in force.

2229 Seizure and sale order—appropriation of payments towards order debt

Unless the court otherwise orders, any payment made on account of an order debt is to be appropriated—

(a) first towards the part of the order debt that is costs; and

(b) second towards the part of the order debt that is interest; and

(c) third toward the balance of the order debt.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2230 Seizure and sale order—documents giving effect to sale

(1) If land is sold at auction under a seizure and sale order, the enforcement officer and the purchaser must each sign an appropriate contract of sale immediately after the auction.

(2) Unless the court otherwise orders, the settlement date under the contract of sale must not be later than 90 days after the day of the auction.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(3) As soon as practicable after receiving payment in full for land sold under a seizure and sale order, an appropriate transfer prepared by the purchaser must be executed by the enforcement officer and given to the purchaser for the purpose of giving effect to the sale.

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2231 Seizure and sale order—payment to enforcement debtor

(1) An enforcement creditor on whose application a seizure and sale order has been made may file in the court—

(a) an agreement with the enforcement debtor about the amount of the enforcement creditor's costs of enforcement (a ***costs agreement***); or

Note Rule 1702 (Costs—agreement about costs) applies to the agreement.

(b) a bill of costs.

(2) A costs agreement or bill of costs must be filed—

(a) not later than 2 months after the day an enforcement officer receives the proceeds of any sale under the seizure and sale order; or

(b) within any longer time the enforcement debtor agrees to in writing.

(3) If the enforcement creditor files a costs agreement in accordance with subrule (2), the registrar must pay the enforcement debtor any amount held by the court over the amount necessary to satisfy the seizure and sale order.

(4) If the enforcement creditor files a bill of costs in accordance with subrule (2), the registrar must pay the enforcement debtor, before assessing the costs, any amount held by the court over the amount that, on the basis of the amount claimed in the bill of costs, is necessary to satisfy the seizure and sale order.

(5) If the enforcement creditor does not file a costs agreement or bill of costs in accordance with subrule (2), the registrar may pay the enforcement debtor any amount held by the court over the total amount necessary to satisfy the seizure and sale order (including interest) and the costs of enforcement then known to the registrar.

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(6) The registrar must pay the enforcement creditor any of the proceeds of sale that the registrar is not required by this rule to pay to the enforcement debtor.

(7) This rule does not affect the right of the enforcement creditor to recover from the enforcement debtor the costs of enforcement of the seizure and sale order.

2232 Seizure and sale order—purchase by enforcement officer or auctioneer prohibited

(1) This rule applies to—

(a) an enforcement officer; or

(b) a real estate agent or auctioneer appointed or engaged by an enforcement officer in relation to a seizure and sale order; or

(c) an employee of the real estate agent or auctioneer.

(2) A person to whom this rule applies is not entitled—

(a) to bid at an auction at which property seized under the order is offered for sale; or

(b) to purchase, personally or for someone else, any property seized under the order at auction or by private agreement.

2233 Seizure and sale order—account etc

(1) This rule applies to a person if the person—

(a) is a real estate agent or auctioneer; and

(b) is appointed or engaged by an enforcement officer in relation to a seizure and sale order.

(2) The person must tell an enforcement officer the amount of the person's charges in relation to the seizure and sale order as soon as practicable after—

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(a) being told by the enforcement officer that the person's services are not required, or will no longer be required, in relation to the order; or

(b) being asked by an enforcement officer for an account of the person's charges in relation to the order.

(3) The person must, as soon as practicable after receiving any amount under a seizure and sale order, pay the amount, less the person's charges, to an enforcement officer.

2234 Seizure and sale order—report by enforcement officer

(1) If an enforcement officer sells property seized under a seizure and sale order, the enforcement officer must, on request by the registrar, enforcement creditor or enforcement debtor, give a report of the sale of the property seized under a seizure and sale order.

(2) The report must include an account of—

(a) the proceeds of the sale and any other amount received by the enforcement officer under the seizure and sale order; and

(b) all the costs and charges incurred in giving effect to the order, including any costs of removing the property from where it was seized and advertising the sale; and

(c) how the proceeds and other amount (if any) have been disposed of.

2235 Seizure and sale order—order for disposal and return of property to enforcement debtor

(1) If property seized under a seizure and sale order remains unsold after being offered for sale at an auction, the court may, on application by the enforcement creditor, make an order for the disposal of the property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(2) An application under subrule (1) must be made not later than 4 weeks after the day of the auction.

(3) In considering whether to make an order for the disposal of the property, the court must have regard to—

(a) the amount of the enforcement debt and costs and charges remaining unpaid; and

(b) any hardship that would be imposed on the enforcement creditor if the order were not made and on the enforcement debtor if the order were made.

(4) If—

(a) the enforcement creditor does not make an application in accordance with subrule (2) in relation to property remaining unsold; or

(b) the court refuses to make an order under subrule (1) for the disposal of property remaining unsold;

the property must be returned to the enforcement debtor.

Division 2.18.6 Enforcement of money orders—debt redirection orders generally

2300 Application—div 2.18.6

(1) This division applies if a debt is, or is likely to become, payable by a person (a ***third person***) to the enforcement debtor for a money order.

Note Div 2.18.7 also applies if the third person is a financial institution and regular redirection of amounts is, or is to be, authorised.

(2) However, this division does not apply to—

(a) a redirection of earnings; or

(b) an order for the payment of money into court.

Note Div 2.18.8 deals with earnings redirection orders.

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2301 Debt redirection order—making

(1) On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may make an order (a ***debt redirection order***) authorising the redirection to the enforcement creditor of the third person's debt to the enforcement debtor.

(2) To remove any doubt, a single debt redirection order may be made in relation to 2 or more debts.

(3) A debt may be redirected only if the debt is payable or accruing to the enforcement debtor by the third person on the day the order for redirection of the debt is served on the third person.

Note See r 2050 (Enforcement orders—content and issue) for provisions about the content and issue of the order.

2302 Debt redirection order—application

(1) An application for a debt redirection order is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.62 (Debt redirection order) AF2006-307.

(2) The affidavit in support must state—

(a) the date the money order was made; and

(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the money order; and

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(f) the costs incurred in previous enforcement proceedings in relation to the money order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the money order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the money order, will accrue after the affidavit date; and

(j) the name of the third person; and

(k) the amount of the debt that appears to be owed by the third person to the enforcement debtor; and

(l) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

(4) Part 6.2 (Applications in proceedings) does not apply to the application.

(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application for a debt redirection order must be dealt with without a hearing and in the absence of the parties.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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2303 Debt redirection order—relevant considerations

(1) In deciding whether to make a debt redirection order, the court must have regard to the following matters, as far as they are known to the court:

(a) the enforcement debtor's means of satisfying the order debt;

(b) whether the order debt, including any interest, will be satisfied within a reasonable time;

(c) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(d) other liabilities of the enforcement debtor;

(e) the amount of the order debt;

(f) the amount of the debt to be redirected and the amount of each instalment (if any);

(g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly;

(h) whether, having regard to the nature of the debt and the kind of redirection, the redirection is appropriate.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount of the debt to be redirected under the order and the amount of each instalment (if any), the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the debt redirection order.

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2304 Debt redirection order—joint funds

(1) This rule applies if the debt belonging to the enforcement debtor is a fund of money owned by the enforcement debtor and others (a ***joint fund***).

(2) A debt redirection order may authorise redirection to an enforcement creditor of the joint fund to the extent of the enforcement debtor's entitlement.

(3) Unless, on application of a fund owner or enforcement creditor, the court decides the actual beneficial entitlement of each fund owner, it is presumed a joint fund is owned by the fund owners in equal shares.

Note Pt 6.2 (Applications in proceedings) applies to an application under r (3).

2305 Debt redirection order—partnership debts

A court may make a debt redirection order in relation to debts belonging to an enforcement debtor from a partnership carrying on business in the ACT even if a partner lives outside the ACT.

2306 Debt redirection order—account with financial institution

(1) An amount standing to the credit of an enforcement debtor in an account with a financial institution is, for enforcing a money order, a debt payable by the financial institution to the enforcement debtor.

(2) Subrule (1) applies even if any of the following conditions applying to the account have not been satisfied:

(a) a condition requiring a demand or notice to be made or given before an amount is withdrawn;

(b) a condition about how, or the place where, a demand is to be made;

(c) a condition requiring a personal application to be made before an amount is withdrawn;

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(d) a condition requiring the production of a deposit book, receipt or anything else for an amount deposited in the account before the amount is withdrawn;

(e) a condition requiring an amount not be withdrawn for a stated period;

(f) a condition requiring a minimum amount for a withdrawal;

(g) a condition requiring a minimum balance to be maintained in the account;

(h) a similar condition.

(3) This rule applies, with any necessary changes, to an amount that is placed to the credit of an enforcement debtor in an account in a financial institution between the date of the debt redirection order and any hearing deciding the validity of the order.

2307 Debt redirection order—claim by someone else

(1) This rule applies if—

(a) the court is considering making, or has made, a debt redirection order for a debt; and

(b) the court considers that someone other than the enforcement debtor who may be entitled to all or a part of the debt, or to a charge or lien on it, (an ***interested person***) should be given the opportunity to object.

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(2) The court may, on its own initiative, give the directions it considers appropriate for deciding the interested person's entitlement.

Examples of directions

1 that a stamped copy of a debt redirection order be served on a person who may be an interested person

2 that a stamped copy of an objection, supporting affidavit, or response to an objection, filed under rule 2311 (Debt redirection order—third person disputes liability) be served on a person who may be an interested person

3 that a person who may be an interested person be given an opportunity to file a notice of objection and supporting affidavit

4 directions for deciding any question arising out of a notice of objection or supporting affidavit

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2308 Debt redirection order—when debt redirected

(1) A debt redirection order must be served on the third person to have effect.

(2) On the service of the order, all debts then payable or accruing from the third person to the enforcement debtor are redirected in the hands of the third person to the enforcement creditor to the extent of the amount recoverable under in the order.

2309 Debt redirection order—notice by third person to enforcement creditor

If a debt redirection order attaches a debt that is payable to the enforcement debtor later than 28 days after the day the order is served on the third person, the third person must, before the end of that period, serve on the enforcement creditor a notice stating—

(a) the date the debt is, or is likely to be, payable to the enforcement debtor; and

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(b) if the amount of the debt is less than the unpaid amount of the amount recoverable under the money order—the amount of the debt.

2310 Debt redirection order—payments by third person

(1) Payments under a debt redirection order must be made in accordance with, and to the enforcement creditor stated in, the order.

(2) Out of each amount redirected under the order, the third person may deduct a reasonable amount to cover the third person's costs and expenses of complying with the order.

2311 Debt redirection order—third person disputes liability

(1) This rule applies if—

(a) a debt redirection order is served on the third person; and

(b) the third person disputes liability to pay any debt to the enforcement debtor.

(2) The third person may file a notice of objection in the court.

(3) The notice must be filed not later than 7 days after the day the order is served on the third person.

(4) The notice must be accompanied by an affidavit in support stating the facts relied on by the third person.

(5) The disclosure of any information in the affidavit does not subject the third person to any liability if the disclosure was reasonable in the circumstances.

(6) The filing of the notice stays any obligation of the third person to pay the debt to the enforcement debtor or enforcement creditor but does not stay any accrual of interest on the debt.

(7) The third person must serve a stamped copy of the notice and supporting affidavit on the enforcement creditor and enforcement debtor.

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(8) The enforcement debtor or enforcement creditor may file in the court an affidavit in response to the notice of objection.

(9) The court may—

(a) decide the question of liability without a hearing and in the absence of the parties; or

(b) on its own initiative, give directions for the question to be decided.

(10) To remove any doubt, part 6.2 (Applications in proceedings) does not apply to a notice of objection, or response to a notice of objection, under this rule.

2312 Debt redirection order—discharge of third person

(1) A payment to an enforcement creditor made by the third person in accordance with a debt redirection order is a valid discharge of the third person's liability to the enforcement debtor to the extent of the amount paid.

(2) This rule applies even if, after the payment, the debt redirection order is set aside or the money order from which it arose is amended or set aside.

2313 Debt redirection order—payment to enforcement debtor despite redirection

(1) This rule applies if, after redirection of a debt in the hands of the third person—

(a) the third person acts with reasonable diligence to give effect to the redirection; and

(b) although the third person acts with reasonable diligence, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or

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part of the redirected debt, including, for example, by payment to the enforcement debtor.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) On application by the third person or other interested person, the court may order that, for this division, the redirected debt be reduced to the extent of its satisfaction.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2314 Debt redirection order—amending, suspending or setting aside

(1) On application by the enforcement creditor or enforcement debtor, the court may make an order amending, suspending or setting aside a debt redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The registrar must give notice of the date and time the application is to be heard to the enforcement creditor, enforcement debtor and third person.

(3) After hearing the application, the court may make 1 or more of the following orders:

(a) an instalment order;

(b) an order amending, suspending or setting aside the debt redirection order;

(c) a regular redirection order;

(d) an earnings redirection order.

(4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—

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(a) the order (if any) preferred by the enforcement debtor; and

(b) the likelihood of the enforcement debtor complying with an instalment order; and

(c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor; and

(d) any other information that the court considers is relevant and reliable.

(5) Subrule (4) does not limit—

(a) the other matters to which the court must have regard in deciding whether to make an instalment order or earnings redirection order; or

Note For these matters, see—

- r 2154 (Instalment order—relevant considerations)
- r 2352 (Earnings redirection order—relevant considerations).

(b) the other matters to which the court may have regard.

(6) If the court makes an order amending, suspending or setting aside the debt redirection order under this rule—

(a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and third person; and

(b) the order does not come into force until the end of 7 days after the day it is served on the third person.

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2315 Debt redirection order—procedure if order not complied with

(1) If the enforcement creditor considers that a debt redirection order has not been complied with, the court may, on application by the enforcement creditor, hear and decide any question about the liability of the third person to pay the debt to which the order applies.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) If the court is satisfied that the third person is liable to pay the debt and has not complied with the debt redirection order, the court may make an order against the third person in favour of the enforcement creditor for the lesser of—

(a) the amount that has not been paid to the enforcement creditor as required by the debt redirection order; and

(b) the unpaid amount of the order debt.

(3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b), or for any other reason.

(4) As between the third person and the enforcement debtor, an amount paid to the enforcement creditor by the third person under an order under this rule is taken to have been paid by the third person to the enforcement debtor.

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Division 2.18.7 Enforcement of money orders—regular redirections from financial institutions

2330 Application—div 2.18.7

This division applies if—

(a) the enforcement debtor for an enforceable money order of the court has an account with a financial institution; and

(b) the financial institution or someone else (the ***fourth person***) regularly deposits earnings, interest or rent into the account (the ***regular deposit***).

2331 Regular redirection order—application of div 2.18.6

(1) The provisions of division 2.18.6 (other than the non-applied provisions) apply, with any necessary changes, to a regular redirection order under this division as if a reference to the ***third person*** were a reference to the financial institution.

(2) In this rule:

non-applied provisions means the following provisions:

- rule 2301 (3) (Debt redirection order—making)
- rule 2308 (Debt redirection order—when debt redirected)
- rule 2310 (Debt redirection order—payments by third person).

2332 Regular redirection order—making

(1) On application by the enforcement creditor or enforcement debtor for the money order, the court may make an order (a ***regular redirection order***) authorising the regular redirection to the enforcement creditor of all or part of a regular debt.

Note See approved form 2.63 (Regular redirection order) AF2006-308.

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(2) In this rule:

regular debt means a debt, belonging to the enforcement debtor, from the financial institution because of the regular deposit by the fourth person.

2333 Regular redirection order—content

A regular redirection order must state the following:

(a) the name of the financial institution that must deduct amounts from a regular deposit;

(b) details of the enforcement debtor's account from which the deduction is to be made;

(c) the name and address of the fourth person;

Note For the meaning of ***fourth person***, see r 2330.

(d) the amount that the financial institution must deduct each time a regular deposit is made;

(e) the name and address of the enforcement creditor to whom the financial institution must give the deducted amount.

Note The order must also state the matters mentioned in r 2050 (Enforcement orders—content and issue).

2334 Regular redirection order—service and coming into force

(1) This rule applies if the court makes a regular redirection order, whether or not on the enforcement creditor's application.

Note The registrar must give a sealed copy of the order to the enforcement creditor (see r 2050 (4)).

(2) The enforcement creditor must serve a sealed copy of the order personally or by prepaid post on the financial institution and the enforcement debtor.

(3) The order does not come into force until the end of 7 days after the day the order is served on the financial institution.

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2335 Regular redirection order—financial institution to make payments etc

(1) For each regular deposit into the enforcement debtor's account while the regular redirection order is in force, the financial institution—

(a) must, not later than 3 days after the day the deposit is made, deduct from the account the amount stated in the order and pay it to the enforcement creditor stated in the order; and

(b) may deduct from the account a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(c) must, at least once a month, give the enforcement debtor a notice detailing the deductions.

(2) Any charge deducted under subrule (1) (b) must not be more than—

(a) if the financial institution has an amount it usually charges its customers for making periodic payments—that amount; or

(b) otherwise—an amount that covers the financial institution's costs and expenses of complying with the order.

(3) In applying subrule (1) (a) to the last deduction, the financial institution must deduct the amount (not more than the amount stated in the order for deduction for each regular deposit) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

(4) A deduction paid or kept by a financial institution under subrule (1) is a valid discharge of the financial institution's liability to the enforcement debtor to the extent of the deduction.

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2336 Regular redirection order—enforcement debtor not to defeat order

(1) The enforcement debtor must ensure that sufficient funds remain in the enforcement debtor's account after each regular deposit for the deduction from the account of the amount stated in the order.

(2) The enforcement debtor must tell the enforcement creditor in writing if—

(a) the fourth person discontinues making the regular deposit; or

Note For the meaning of ***fourth person***, see r 2330.

(b) the enforcement debtor closes the account or arranges for the fourth person to pay the enforcement debtor in another way.

2337 Regular redirection order—no other enforcement while in force

Unless the court otherwise orders, while a regular redirection order is in force in relation to a money order, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2338 Regular redirection order—ceasing to have effect

(1) A regular redirection order ceases to have effect when—

(a) the order debt is satisfied; or

(b) the regular redirection order is set aside or ends in accordance with its terms.

(2) If a regular redirection order ceases to have effect otherwise than because of an order the enforcement creditor is required under these rules to serve on the financial institution, the enforcement creditor

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must give notice to the financial institution that the regular redirection order has ceased to have effect.

(3) The enforcement creditor must file a copy of the notice in the court.

(4) If a regular redirection order ceases to have effect, the financial institution does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the financial institution:

(a) a sealed copy of the order because of which the regular redirection order ceases to have effect;

(b) the notice mentioned in subrule (2).

2339 Regular redirection order—return of excess

(1) If a regular redirection order is made for an order debt and the enforcement creditor receives from the financial institution more than the amount payable under the order—

(a) the enforcement creditor must return the excess to the financial institution; and

(b) the financial institution must deposit it to the account from which amounts were deducted under the regular redirection order or otherwise deal with it in accordance with the enforcement debtor's written request.

(2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.

(3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

2340 Regular redirection order—record of payments

(1) If a regular redirection order is made for an order debt, the enforcement creditor must make a record of the amount and date of

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each payment received by the enforcement creditor under the regular redirection order.

(2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the regular redirection order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.

(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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Division 2.18.8 Enforcement of money orders—earnings redirection orders

2350 Earnings redirection order—making

On application by the enforcement creditor or enforcement debtor for an enforceable money order of the court, the court may make an order (an ***earnings redirection order***) authorising redirection to the enforcement creditor of particular earnings of the enforcement debtor from an employer of the enforcement debtor.

Note 1 ***Employer*** of an enforcement debtor is defined in r 2000.

Note 2 An earnings redirection order may be made at an enforcement hearing (see r 2112 (Enforcement hearing—orders)).

2351 Earnings redirection order—application

(1) An application for an earnings redirection order is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.64 (Earnings redirection order) AF2009-147.

(2) The affidavit in support must state—

(a) the date the money order was made; and

(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

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(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

(4) Part 6.2 (Applications in proceedings) does not apply to the application.

(5) The affidavit and draft order need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application for an earnings redirection order must be dealt with without a hearing and in the absence of the parties.

2352 Earnings redirection order—relevant considerations

(1) In deciding whether to make an earnings redirection order, the court must have regard to the following matters, as far as they are known to the court:

(a) the enforcement debtor's means of satisfying the order debt;

(b) whether the order debt, including any interest, will be satisfied within a reasonable time;

(c) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

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(d) other liabilities of the enforcement debtor;

(e) the amount of the order debt;

(f) the amount of the earnings to be redirected each payday;

(g) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.

(2) Subrule (1) does not limit the matters to which the court may have regard.

(3) In deciding the amount and timing of the earnings to be redirected under the order on each payday, the court must be satisfied that the order will not impose unreasonable hardship on the enforcement debtor or any dependant of the enforcement debtor.

(4) However, an enforcement hearing is not necessary before the court makes the earnings redirection order.

2353 Earnings redirection order—limit

The court must not make an earnings redirection order for the enforcement debtor that would, if the order (and all other earnings redirection orders (if any) in force for the enforcement debtor) were enforced, reduce the total earnings of the enforcement debtor to an amount that is less than—

(a) if the enforcement debtor has dependants—$484.40 a week; or

(b) if the enforcement debtor does not have dependants—$363.30 a week.

2354 Earnings redirection order—information about enforcement debtor's earnings

To decide whether to make an earnings redirection order, the court may order a person the court considers may pay earnings to the

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enforcement debtor to give the court a signed statement setting out details of—

(a) the earnings owing to the debtor; and

(b) the earnings payable to the debtor from time to time.

Note The court may also order that an enforcement hearing be held (see r 2101 (Enforcement hearing—otherwise than on enforcement creditor's application)).

2355 Earnings redirection order—content

An earnings redirection order must state—

(a) the name of the enforcement debtor; and

(b) the name of the enforcement debtor's employer who must deduct from the enforcement debtor's earnings; and

(c) the total amount the employer must deduct from the enforcement debtor's earnings; and

(d) if an amount is required to be deducted from the enforcement debtor's earnings each payday—the amount; and

(e) the name and address of the enforcement creditor to whom the employer must pay the deductions.

Note The order must also state the matters mentioned in r 2050 (Enforcement orders—content and issue).

2356 Earnings redirection order—service and coming into force

(1) This rule applies if the court makes an earnings redirection order, whether or not on the enforcement creditor's application.

Note The registrar must give a sealed copy of the order to the enforcement creditor (see r 2050 (4)).

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(2) The enforcement creditor must serve a sealed copy of the order personally or by prepaid post on the enforcement debtor's employer and the enforcement debtor.

(3) The enforcement creditor must also serve on the enforcement debtor's employer—

(a) a notice telling the enforcement debtor's employer of the effect of the order and the employer's obligations under this division; and

Note See approved form 2.65 (Notice to employer—earnings redirection order) AF2009-148.

(b) a copy of a notice that the employer may use if the debtor is not employed by the employer.

Note See approved form 2.66 (Notice that debtor not employee) AF2006-311.

(4) The order does not come into force until the end of 7 days after the day it is served on the employer.

2357 Earnings redirection order—person served not employer

(1) This rule applies if—

(a) an earnings redirection order is served on a person on the basis that the person is the enforcement debtor's employer; and

(b) the person is not the enforcement debtor's employer when the order is served on the person.

(2) The person must immediately tell the registrar, in writing, that the person is not the enforcement debtor's employer.

Note See approved form 2.66 (Notice that debtor not employee) AF2006-311.

(3) To remove any doubt, the person is not bound by the order.

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2358 Earnings redirection order—employer to make payments etc

(1) For each payday while an earnings redirection order is in force, the enforcement debtor's employer—

(a) must deduct from the enforcement debtor's earnings the amount stated in the order and pay it to the person stated in the order; and

(b) may deduct from the enforcement debtor's earnings a reasonable administration charge and keep it as a contribution towards the administrative cost of making payments under the order; and

(c) must give the enforcement debtor a notice detailing the deductions.

(2) Any charge deducted by an employer under subrule (1) (b) must not be more than—

(a) if the employer has an amount the employer usually charges employees for making periodic payments—that amount; or

(b) otherwise—an amount that covers the employer's costs and expenses of complying with the order.

(3) In applying subrule (1) (a) to the last deduction, the employer must deduct the amount (not more than the amount stated in the order for deduction each payday) that results in the total amount deducted under the order being the total amount for deduction stated in the order.

(4) A deduction paid or kept by an employer under subrule (1) is a valid discharge as between the employer and the enforcement debtor, to the extent of the deduction, of the employer's liability to pay earnings.

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2359 Earnings redirection order—no other enforcement while in force

Unless the court otherwise orders, while an earnings redirection order is in force in relation to a money order, no other enforcement order may be made in relation to the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2360 Earnings redirection order—amending, suspending or setting aside

(1) On application by the enforcement creditor or enforcement debtor, the court may make an order amending, suspending or setting aside an earnings redirection order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The registrar must give notice of the date and time the application is to be heard to the enforcement creditor, enforcement debtor and enforcement debtor's employer.

(3) After hearing the application, the court may make 1 or more of the following orders:

(a) an instalment order;

(b) an order amending, suspending or setting aside the earnings redirection order;

(c) a debt redirection order;

(d) a regular redirection order.

(4) In considering whether to make an order mentioned in subrule (3), the court must have regard to—

(a) the order (if any) preferred by the enforcement debtor; and

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(b) the likelihood of the enforcement debtor complying with an instalment order; and

(c) the property and financial circumstances of the enforcement debtor, including any other enforcement orders (however described) in force against the enforcement debtor; and

(d) any other information that the court considers is relevant and reliable.

(5) Subrule (4) does not limit—

(a) the other matters to which the court must have regard in deciding whether to make an instalment order or debt redirection order; or

Note For these matters, see—

- r 2154 (Instalment order—relevant considerations)
- r 2303 (Debt redirection order—relevant considerations).

(b) the other matters to which the court may have regard.

(6) If the court makes an order amending, suspending or setting aside the earnings redirection order under this rule—

(a) the registrar must serve a sealed copy of the order on the enforcement creditor, enforcement debtor and employer; and

(b) the order does not come into force until the end of 7 days after the day it is served on the employer.

2361 Earnings redirection order—ceasing to have effect

(1) An earnings redirection order for a money order ceases to have effect when—

(a) the order debt is satisfied; or

(b) the earnings redirection order is set aside or ends in accordance with its terms; or

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(c) unless the court otherwise orders, another enforcement order is made for the money order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) If an earnings redirection order ceases to have effect otherwise than because of an order the enforcement creditor is required under these rules to serve on the enforcement debtor's employer, the enforcement creditor must give notice to the employer that the earnings redirection order has ceased to have effect.

(3) The enforcement creditor must file a copy of the notice in the court.

(4) If an earnings redirection order ceases to have effect, the enforcement debtor's employer does not incur any liability by treating the order as still in force at any time before the end of 7 days after the day either of the following is given to the employer:

(a) a sealed copy of the order because of which the earnings redirection order ceases to have effect;

(b) the notice mentioned in subrule (2).

2362 Earnings redirection order—return of excess

(1) If an earnings redirection order is made for an order debt and the enforcement creditor receives from the enforcement debtor's employer more than the amount payable under the order—

(a) the enforcement creditor must return the excess to the employer; and

(b) the employer must pay it to the enforcement debtor.

(2) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt owing to the debtor.

(3) For subrule (2), interest is payable on the amount of the excess as if the excess were an order debt.

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2363 Earnings redirection order—record of payments

(1) If an earnings redirection order is made for an order debt, the enforcement creditor must make a record of the amount and date of each payment received by the enforcement creditor under the earnings redirection order.

(2) The enforcement creditor must keep the record for at least 6 years after the day the last payment is made under the earnings redirection order.

(3) The enforcement debtor is entitled, at any reasonable time while the record is being kept, to inspect the record and make a copy of, or take an extract from, the record.

(4) If the enforcement debtor asks for a copy of all or part of the record while it is being kept, the enforcement creditor must give the copy to the enforcement debtor on payment of a reasonable charge for preparing the copy.

(5) On application by the enforcement debtor, the court may make any order it considers appropriate to ensure compliance with this rule, including, for example—

(a) an order requiring the enforcement creditor to—

(i) file in the court a copy of all or part of the record verified by affidavit; or

(ii) give the enforcement debtor a copy of all or part of the record; or

(b) an order that the enforcement creditor is not entitled to interest on the order debt for all or part of a period.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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2364 Earnings redirection order—2 or more orders in force

(1) This rule applies if 2 or more earning redirection orders are in force in relation to the same earnings of an enforcement debtor.

(2) The employer must comply with the orders according to the dates they were served on the employer and disregard an order served later until an order served earlier ceases to have effect.

Note Rule 2361 deals with earnings redirection orders ceasing to have effect.

(3) If an earnings redirection order is amended, it continues to have priority according to the date the original order was served.

2365 Earnings redirection order—person served ceasing to be employer

(1) This rule applies if—

(a) a person who is an enforcement debtor's employer is served with an earnings redirection order; and

(b) the person later ceases to be the enforcement debtor's employer.

(2) The person must immediately tell the court and enforcement creditor, in writing, that the person is no longer the enforcement debtor's employer.

Note See approved form 2.67 (Notice of cessation of employment) AF2006-312.

2366 Earnings redirection order—enforcement debtor changes or ceases employment

(1) This rule applies if an enforcement debtor for whom an earnings redirection order is in force changes employer or ceases to be employed.

(2) Not later than 7 days after the day the enforcement debtor changes employer or ceases employment, the enforcement debtor must tell the

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registrar and the enforcement creditor, in writing, the details of the debtor's new employer or that the debtor has ceased employment.

Note See approved form 2.68 (Notice by enforcement debtor of change in employment) AF2006-313.

(3) If the registrar is told under subrule (2) that the enforcement debtor has changed employer, the court may, on its own initiative—

(a) set aside the existing earnings redirection order; and

(b) make a new earnings redirection order authorising redirection to the enforcement creditor of earnings of the enforcement debtor from the new employer.

2367 Earnings redirection order—directions

(1) An employer on whom an earnings redirection order is served may apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The employer must serve a stamped copy of the application on the enforcement creditor and enforcement debtor.

(3) The enforcement creditor and enforcement debtor are parties to the application.

(4) On application under this rule, the court may give the directions it considers appropriate.

(5) Without limiting subrule (4), the court may decide whether payments being made by the employer to the enforcement debtor that are described in the application are earnings.

(6) While the application or any appeal from a decision made on the application is pending, the employer does not incur any liability for failing to comply with the earnings redirection order in relation to payments mentioned in subrule (5) that are described in the application.

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2368 Earnings redirection order—employment protection

An employer must not dismiss an employee, or otherwise prejudice an employee in the employee's employment, because an earnings redirection order authorising redirection of the employee's earnings has been made.

2369 Earnings redirection order—procedure if order not complied with

(1) If the enforcement creditor considers that an earnings redirection order has not been complied with, the court may, on application by the enforcement creditor, hear and decide any question about the liability of the enforcement debtor's employer to pay the earnings to which the order applies.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) If the court is satisfied that the employer is liable to pay the earnings, the court may make an order against the employer in favour of the enforcement creditor for the lesser of—

(a) the amount of earnings that has not been paid to the enforcement creditor as required by the earnings redirection order; and

(b) the unpaid amount of the order debt.

(3) The court may refuse to make an order under subrule (2) if it considers the order should not be made because of the smallness of either of the amounts mentioned in subrule (2) (a) or (b).

(4) As between the employer and the enforcement debtor, an amount paid to the enforcement creditor by the employer under an order under this rule is taken to have been paid by the employer to the enforcement debtor.

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Division 2.18.9 Enforcement of money orders—charging orders

2400 Application—div 2.18.9

This division applies only in relation to the Supreme Court.

2401 Charging order—making

(1) On application by the enforcement creditor for an enforceable money order of the court, the court may make an order (a ***charging order***) imposing a charge over all or part of the enforcement debtor's equitable interest in any property or legal or equitable interest in 1 or more of the following (each of which is a ***security interest***):

(a) annuities;

(b) debentures;

(c) stocks;

(d) bonds;

(e) shares;

(f) marketable securities;

(g) interests in a managed investment scheme;

(h) units of—

(i) shares; or

(ii) marketable securities;

(i) money on deposit in a financial institution that is held—

(i) in the enforcement debtor's name in the enforcement debtor's own right; or

(ii) in someone else's name on trust for the enforcement debtor.

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(2) A charging order operates, in relation to each security interest stated in the order—

(a) to charge the security interest in favour of the enforcement creditor to the extent necessary to satisfy the order debt; and

(b) to restrain the chargee from dealing with the security interest otherwise than in accordance with the directions of the enforcement creditor.

2402 Charging order—application

(1) An application for a charging order is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note See approved form 2.69 (Charging order) AF2006-314.

(2) The affidavit in support must state—

(a) the date the money order was made; and

(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

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(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) the security interest or interests to be charged by the order being sought; and

(k) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

(4) Part 6.2 (Applications in proceedings) does not apply to the application.

(5) The draft order and affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application for a charging order must be dealt with without a hearing and in the absence of the parties.

2403 Charging order—effect

(1) A charging order takes effect when it is made.

(2) However, to have effect on the enforcement debtor, a charging order must be served on the enforcement debtor.

(3) A charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge imposed by the order had been made in the enforcement creditor's favour by the enforcement debtor.

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(4) However, unless the court otherwise orders, the enforcement creditor must not start a proceeding to obtain a remedy in relation to property charged by the charging order until—

(a) a sealed copy of the charging order is served on the enforcement debtor and the person who issued or administers the property; and

(b) 1 month has passed since the day the order was served, or the later of the days the order was served, as required by paragraph (a).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

2404 Charging order—enforcement debtor dealing with charged property

(1) After being served with a charging order in relation to property, the enforcement debtor must not sell, transfer or otherwise deal with the property otherwise than in accordance with the directions of the court or the enforcement creditor.

(2) Any sale, transfer or other dealing by the enforcement debtor in contravention of subrule (1) is of no effect against the enforcement creditor.

(3) The court may set aside or restrain the sale, transfer or other dealing unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

2405 Charging order—issuer etc dealing with charged property

(1) This rule applies to—

(a) a person who issued or administers charged property and has been served with a charging order in relation to the property; and

(b) anyone else who has notice of a charging order in relation to property.

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(2) The person must not sell, transfer or otherwise deal with the property otherwise than in accordance with the directions of the court or the enforcement creditor.

(3) If the person deals with the property in contravention of subrule (2), the person is liable to the enforcement creditor for whichever is the smaller of—

(a) the value or amount of the charged property sold, transferred or otherwise dealt with; and

(b) the order debt.

2406 Charging order—application to enforce charge

An application to enforce a charge imposed under a charging order must be made in the proceeding in which the order is made.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2407 Charging order—procedure against partnership property for partner's separate order debt

(1) This rule applies if the enforcement debtor in relation to an enforceable money order of the court is a partner in a partnership.

(2) On application by the enforcement creditor, the court may—

(a) make an order charging the interest of the partner in the partnership property and profits of the partnership with payment of the amount of the order debt (including interest); and

(b) by that order or another order—

(i) appoint a receiver of the partner's share of the profits (whether already declared or accruing) of the partnership and of any other amount that may be coming to the partner in relation to the partnership; and

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(ii) make any order or give any direction that might have been made or given if the charge had been made in favour of the enforcement creditor by the partner or that the circumstances require.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The application must be served on the enforcement debtor and the partners of the partnership.

(4) For this rule, service on each partner who lives in the ACT is sufficient service on any partner who lives outside the ACT.

(5) If the interest of a partner in partnership property and profits of the partnership is charged under subrule (2), the other partners in the partnership may—

(a) at any time, redeem the interest charged; or

(b) if a sale of the interest is directed—buy the interest.

(6) This rule does not apply in relation to an incorporated limited partnership.

Division 2.18.10 Enforcement of money orders—amounts in court and stop orders

2420 Enforcement orders—amounts in court

(1) This rule applies if the enforcement debtor for a money order is entitled, in the enforcement debtor's own right, to an amount, security or bond in court standing to the enforcement debtor's credit in another proceeding in the court.

(2) On application by the enforcement creditor, the court may order that the amount, security or bond be applied towards satisfying the order debt.

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(3) The application must be made in the proceeding in which the money order is being enforced.

(4) An amount, security or bond in court standing to the credit of an enforcement debtor must not be paid out if an application in relation to the amount, security or bond has been made under this rule and not heard.

2421 Enforcement orders—stop orders

(1) This rule applies if a person claims an interest (including an interest under a charge) in any amount, security or bond in court that has been mortgaged, charged or assigned.

(2) On application by the person, the court may make an order (a ***stop order***) preventing payment, delivery or transfer of the amount, security or bond without notice to the applicant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The application must be made in the proceeding in which the amount, security or bond stands in court.

(4) The application must be accompanied by an affidavit in support of the application.

(5) The affidavit must include information sufficient to identify the proceeding mentioned in subrule (3).

(6) A copy of the application must be served on anyone who appears to have an interest in the amount, security or bond.

(7) An amount, security or bond in court must not be paid, delivered or transferred if an application in relation to the amount, security or bond has been made under this rule and not heard.

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Division 2.18.11 Enforcement of money orders—receivers

2430 Application—div 2.18.11

This division applies only in relation to the Supreme Court.

2431 Receiver—appointment

(1) On application by the enforcement creditor for an enforceable money order of the court, the court may appoint a receiver to receive an amount payable under the order if it is impracticable to enforce payment in another way.

(2) A receiver may be appointed even though no other proceeding has been taken for enforcement of the money order.

2432 Receiver—application for appointment

(1) An application for an order appointing a receiver must be accompanied by—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order appointing a receiver.

(2) The affidavit in support must state—

(a) the date the money order was made; and

(b) the date a sealed copy of the money order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor; and

(c) the amount of the order debt; and

(d) that the order debt has not been fully paid; and

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(e) the date and amount of each payment (if any) made under the order; and

(f) the costs incurred in previous enforcement proceedings in relation to the order; and

(g) the interest owing on the day the affidavit is made (the ***affidavit date***); and

(h) any other details necessary to work out the amount payable under the order on the affidavit date and how the amount is worked out; and

(i) the daily amount of any interest that, subject to any future payment under the order, will accrue after the affidavit date; and

(j) any other information necessary for the order being sought.

(3) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

2433 Receiver—relevant considerations for appointment

(1) In deciding whether to make an order appointing a receiver, the court must have regard to—

(a) the amount of the order debt; and

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and remunerating a receiver.

(2) In deciding whether to make an order appointing a receiver, the court may direct the holding of an enforcement hearing or other inquiry about a matter mentioned in subrule (1) or anything else the court considers relevant.

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2434 Receiver—powers

The powers of a receiver appointed under this division operate to the exclusion of the enforcement debtor's powers for the duration of the receiver's appointment.

2435 Receiver—general provisions apply

Division 2.9.5 (Receivers) applies, with any necessary changes, to a receivers appointed to enforce an enforceable money order of the court.

Division 2.18.12 Enforcement of non-money orders—general

2440 Enforcement—orders for possession of land

(1) An order of the Supreme Court for possession of land (the ***original order***) may be enforced by 1 or more of the following:

(a) an order for delivery of possession of land;

Note For provisions about orders for delivery of possession of land, see div 2.18.13.

(b) for an order to which rule 2442 (Enforcement—orders to do or not do act) applies—

(i) punishment for contempt of the person liable under the original order; or

Note For provisions about contempt, see div 2.18.16.

(ii) an order for seizure and detention of property against the person liable under the original order.

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

(2) Subrule (1) (b) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).

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2441 Enforcement—orders for return of goods etc

(1) An order for the return of goods, or for the return of goods or the payment of their value, (the ***original order***) may be enforced by 1 or more of the following:

(a) an order for seizure and delivery of goods;

Note For provisions about orders for seizure and delivery of goods, see div 2.18.14.

(b) for an order to which rule 2442 (Enforcement—orders to do or not do act) applies—

(i) punishment for contempt of the person liable under the original order; or

Note For provisions about contempt, see div 2.18.16.

(ii) an order for seizure and detention of property against the person liable under the original order.

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

(2) Subrule (1) (b) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).

(3) An order for the payment of the value of goods may be enforced as if it were a money order.

2442 Enforcement—orders to do or not do an act

(1) This rule applies to an order (the ***original order***) if—

(a) the order is a non-money order that requires a person—

(i) to do an act within a stated time; or

(ii) not to do an act; and

(b) the person contravenes the order.

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(2) The original order may be enforced in 1 or more of the following ways:

(a) punishment for contempt of the person liable under the original order;

Note For provisions about contempt, see div 2.18.16.

(b) an order for seizure and detention of property against the person liable under the original order;

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

(c) if the person liable under the original order is a corporation—without limiting paragraphs (a) and (b), the following:

(i) punishment for contempt of any senior officer of the corporation;

(ii) an order for seizure and detention of property against the corporation.

(3) Subrule (2) is subject to rule 2446 (Enforcement by contempt or seizing and detaining property—preconditions).

(4) Also, if the original order is an order to do an act, the court may—

(a) appoint someone else to do the act; and

(b) order the person liable under the original order to pay the costs and expenses caused by the failure to do the act.

(5) Subrule (4) does not affect the court's power to—

(a) appoint a person to execute a document by order of the court; or

(b) punish for contempt.

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2443 Enforcement—undertakings

(1) An undertaking to the court, other than for the payment of money, may be enforced in 1 or more of the following ways:

(a) punishment for contempt of the person liable under the undertaking;

Note For provisions about contempt, see div 2.18.16.

(b) an order for seizure and detention of property against the person liable under the undertaking;

Note For provisions about orders for seizure and detention of property, see div 2.18.15.

(c) if the person liable under the undertaking is a corporation—without limiting paragraphs (a) and (b), the following:

(i) punishment for contempt of any senior officer of the corporation;

(ii) an order for seizure and detention of property against the corporation.

(2) Also, if the undertaking is an undertaking to do an act, the court may—

(a) appoint someone else to do the act; or

(b) order the person liable under the undertaking to pay the costs and expenses caused by the failure to do the act.

(3) An undertaking for the payment of money may be enforced as if it were a money order.

(4) If a party is in breach of an undertaking, another party may apply for compensation to the court in the proceeding in which the undertaking was given.

Note Pt 6.2 (Applications in proceedings) applies to an application for compensation under this rule.

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(5) If the court decides that—

(a) a party is in breach of an undertaking; and

(b) another party has sustained a loss because of the breach; and

(c) the party in breach should pay the other party compensation for the loss;

the court may make an order against the party in breach for the amount the court decides should be paid.

2444 Enforcement—failure of individual to comply with subpoena etc

(1) This rule applies if an individual fails to comply with—

(a) a subpoena; or

(b) a notice for non-party production; or

(c) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of the individual; and

(b) the production of the individual as required by the subpoena, notice or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) Without limiting rule 6016 (Application in proceeding—oral application), an application for an order under this rule may be made orally, unless the court otherwise orders on its own initiative.

(4) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.

(5) This rule does not limit any other power of the court.

Note Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

(6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

2445 Enforcement—failure of corporation to comply with subpoena etc

(1) This rule applies if a corporation fails to comply with—

(a) a subpoena; or

(b) a notice for non-party production; or

(c) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner, referee or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of a named senior officer of the corporation; and

(b) the production of the senior officer as required by the subpoena, notice or order for the purpose of the proceeding; and

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(c) the detention in custody of the senior officer until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

(4) This rule does not limit any other power of the court.

Note Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

(5) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

2446 Enforcement by contempt or seizing and detaining property—preconditions

(1) Unless the court otherwise orders, a non-money order (the ***original order***) may be enforced by a contempt proceeding or an order for seizure and detention of property only if—

(a) the person against whom the original order is to be enforced is served personally with a sealed copy of the original order; and

(b) if the original order requires a person to do an act within a time stated in the order—the order is served a reasonable time before the end of the time stated in the order; and

(c) the sealed copy of the original order is endorsed with a notice that states that the person served may be liable to imprisonment or seizure and detention of property if—

(i) the original order requires the person to do something within a fixed time, and the person fails to do it; or

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(ii) the original order requires the person not to do something, and the person does it.

(2) This rule does not apply to a non-money order requiring a person to do an act within a stated time, or requiring a person not to do an act, if the person has notice of the order because—

(a) the person was present when the order was made; or

(b) the person was told about the terms of the order by telephone or in another way a reasonable time before the end of the time for doing the act or before the time when the prohibited act was done.

Division 2.18.13 Enforcement of non-money orders—orders for delivery of possession of land

2450 Application—div 2.18.13

This division applies only in relation to the Supreme Court.

2451 Order for delivery of possession of land—making

(1) On application by the person in whose favour an order for possession of land (the ***original order***) is made, the court may make an order (an ***order for delivery of possession of land***) authorising an enforcement officer to enter on the land described in the order and deliver possession of the land and appurtenances to the person.

Note 1 ***Appurtenances*** are things that belong to an estate in the land eg houses, other buildings and gardens.

Note 2 See approved form 2.70 (Order for delivery of possession of land) AF2006-315.

(2) The application is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

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(3) The affidavit in support must state—

(a) the date a sealed copy of the original order, and the notice in accordance with rule 2015 (2), was served on the enforcement debtor or other person liable to comply with the order; and

(b) that the original order has not been complied with; and

(c) whether to the best of the applicant's knowledge a person other than the person liable under the original order is in possession of the land or part of it and, if so, how the person is in possession; and

(d) how rule 2452 has been complied with; and

(e) any other information necessary for the order being sought.

(4) The affidavit may contain statements of information and belief if the applicant states the sources of the information and the reasons for the belief.

(5) The affidavit must be sworn not earlier than 2 days before the day the application is filed in the court.

(6) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(7) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(8) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

2452 Orders for delivery of possession of land—preconditions

(1) An order for possession of land (the ***original order***) may be enforced by an order for delivery of possession of land only if the person against whom the original order is to be enforced is served with a copy of the original order at least 7 days before the order for delivery of possession of land is made.

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(2) If a person other than the person against whom the original order is made is in possession of the land or part of it, an order for delivery of possession of land may be made only if the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 2.18.14 Enforcement of non-money orders—orders for seizure and delivery of goods

2460 Order for seizure and delivery of goods—making

(1) If an order for the return of goods (the ***original order***) does not give the person against whom the original order is made the option of retaining the goods and paying their value, the court may, on application by the person in whose favour the original order was made, make an order (an ***order for seizure and delivery of goods***) authorising an enforcement officer to seize the goods and deliver them to the person who is entitled to them under the original order.

Note See approved form 2.71 (Order for seizure and delivery of goods) AF2006-316.

(2) If—

(a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and

(b) the person does not exercise the option;

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the court may, on application by the person in whose favour the original order was made, make an order for seizure and delivery of goods.

(3) An application under this rule is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the application.

(4) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(5) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application under this rule must be dealt with without a hearing and in the absence of the parties.

(7) An order for seizure and delivery of goods may include provision for enforcing the payment of an amount required by the order to be paid.

(8) If—

(a) the original order gives the person against whom the original order is made the option of retaining the goods and paying their value; and

(b) the person exercises the option;

the original order may be enforced in the same way as a money order.

Division 2.18.15 Enforcement of non-money orders—orders for seizure and detention of property

2470 Order for seizure and detention of property—making

The court may make an order (an ***order for seizure and detention of property***) authorising an enforcement officer to seize and detain all

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real and personal property (other than exempt property) in which the person liable to comply with a non-money order has a legal or beneficial interest.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2471 Order for seizure and detention of property—preconditions

The court may make an order for seizure and detention of property only if the non-money order being enforced stated a time for compliance and the time has passed.

2472 Order for seizure and detention of property—against officer of corporation

(1) This rule applies if, to enforce a non-money order with which a corporation must comply, a person applies for an order for seizure and detention or property against a senior officer of the corporation.

(2) A stamped copy of the application and of each affidavit in support must be served on the officer.

2473 Order for seizure and detention of property—return of seized property

If the person against whom an order for seizure and detention of property was made complies or is released from complying with the order, the court may order that the property, after deduction of the costs of enforcement, be returned to the person.

Division 2.18.16 Enforcement—contempt

2500 Contempt—application of div 2.18.16

This division applies to the following contempts:

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(a) contempt for contravention of an order of the court or an undertaking given to the court;

(b) contempt committed in the face or in the hearing of the court;

(c) any other contempt of the court;

(d) contempt of the Australian Crime Commission under the *Australian Crime Commission Act 2002* (Cwlth), section 34A.

2501 Contempt—applications generally

(1) A person applying for punishment of a person (the ***respondent***) for contempt must make an application to the court stating the alleged contempt.

(2) The application may be made—

(a) in the proceeding in which the contempt was committed; or

Note Pt 6.2 (Applications in proceedings) applies to an application under this paragraph.

(b) by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc.

(3) The application must set out particulars of the contempt.

(4) The application and any affidavit in support of it must be served on the respondent personally.

(5) An affidavit in support of or opposing the application must not contain evidence that the person making it could not give if giving evidence orally.

2502 Contempt—application by registrar

The court may, by order, direct the registrar to apply to the court for a person to be punished for contempt.

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2502A Contempt of the Australian Crime Commission

(1) An application for contempt of the Australian Crime Commission by a person (the ***respondent***) must be made by originating application.

Note 1 The *Australian Crime Commission Act 2002* (Cwlth), s 34B sets out the documents that must accompany the application.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc.

(2) The application must state whether or not the respondent has been detained to be brought before the court.

(3) If an application under this rule is discontinued, the applicant must file and serve on the respondent a notice of discontinuance.

Note See div 2.11.6 (Discontinuance and withdrawal)

2503 Contempt—arrest warrant if respondent likely to abscond etc

(1) This rule applies if—

(a) an application for punishment of a person for contempt has been filed in the court; and

(b) the court considers that the person is likely to abscond or otherwise withdraw from the court's jurisdiction.

(2) The court may issue a warrant for the person's arrest and detention in custody until the court hears the charge unless the person gives security satisfactory to the court for the person's appearance in court in person to answer the charge and to submit to the court's decision.

Note See approved form 2.72 (Warrant for arrest for contempt of person likely to abscond) AF2007-64.

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2504 Contempt in face or hearing of court—alternative procedure

(1) For a contempt committed in the face of, or in the hearing of, the court, the procedure under this rule is an alternative to the procedure under rule 2501 (Contempt—applications generally).

(2) If it is alleged or it appears to the court that a person is guilty of contempt of court committed in the face of, or in the hearing of, the court, the court may—

(a) by oral order direct the person to be brought before the court; or

(b) issue a warrant for the person's arrest.

(3) Pending disposal of the charge of contempt, the court may direct that the person be kept in the custody the court directs or be released.

(4) Without limiting subrule (3), the court may release the person on conditions, including, for example, a condition that security be given to secure the person's attendance to answer the charge and that the security be forfeited if the person fails to attend.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) If the person is brought before the court, the court must—

(a) tell the person orally of the contempt charged; and

(b) ask the person to show cause why punishment should not be imposed for contempt of court; and

(c) after hearing the person, decide the matter in the way it considers appropriate; and

(d) make an order for the person's punishment or discharge.

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2505 Contempt—arrest warrant

(1) A warrant for the arrest and detention, or the arrest, of a person (the ***respondent***) under this division must be—

(a) addressed to an enforcement officer; and

(b) signed by a judicial officer of the court.

(2) Pending the court's decision, if the respondent is arrested under a warrant, the respondent must be held in a correctional centre or in any other custody that is satisfactory to the enforcement officer.

(3) The enforcement officer may ask a police officer to help in the exercise of the enforcement officer's powers under the warrant.

(4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.

(5) The enforcement officer or a police officer may deliver the respondent to the person in charge of any correctional centre and the person must receive and keep the respondent in custody until the court or the enforcement officer otherwise directs.

2506 Contempt—punishment

(1) This rule applies if the court decides that a person has committed a contempt.

(2) If the person is an individual, the court may punish the individual by making an order that may be made under the *Crimes (Sentencing) Act 2005*.

(3) If the person is a corporation, the court may punish the corporation by seizing corporation property or a fine or both.

(4) Without limiting subrule (2), the court may make an order for punishment on conditions, including, for example, a suspension of

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punishment during good behaviour, with or without the respondent giving security satisfactory to the court for good behaviour.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) Without limiting subrule (2), if the person is imprisoned for a term, the court may order the person's release from imprisonment before the end of the term.

2507 Contempt—costs

The costs of a proceeding for punishment for contempt are in the court's discretion whether or not a specific punishment is imposed.

Division 2.18.17 Enforcement—arrest warrants for absconding defendants

2550 Application—div 2.18.17

This division applies only in relation to the Supreme Court.

2551 Meaning of *plaintiff* and *defendant*—div 2.18.17

For a proceeding in relation to an enforceable money order of the court—

(a) a reference in this division to the ***plaintiff*** is a reference to the enforcement creditor; and

(b) a reference in this division to the ***defendant*** is a reference to the enforcement debtor.

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2552 Arrest warrant for defendant—application

An application for an arrest warrant under this division need not be served on anyone unless the court otherwise orders on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an arrest warrant.

2553 Arrest warrant for defendant—issue

(1) The court may issue a warrant for the arrest of a defendant under this division only if satisfied that—

(a) the defendant has absconded or is about to abscond; and

(b) the absence of the defendant would materially prejudice the plaintiff in prosecuting a proceeding or enforcing any order that may be given.

(2) The court may issue the warrant at any time, for example, before the defendant has been served with the originating process or before judgment.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) The warrant must state—

(a) the name of the defendant; and

(b) the date the warrant ends.

(4) The date stated under subrule (3) (b) must be not later than 2 months after the day the warrant is issued.

(5) The court may fix an amount to be stated in the warrant entitling the defendant to be released.

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(6) In fixing the amount, the court may have regard to anything it considers relevant, including the following:

(a) the amount (if any) of the plaintiff's claim;

(b) the costs of issuing the warrant;

(c) an estimate of the costs of executing the warrant.

2554 Arrest warrant for defendant—enforcement

(1) The registrar must give a warrant under this division for the arrest of a defendant to an enforcement officer to be enforced.

(2) The warrant may be enforced by the enforcement officer or an appropriately qualified person authorised in writing by the enforcement officer.

(3) Receipt of a fax copy of a warrant is sufficient authority for the enforcement officer or someone else to enforce the warrant.

(4) In this rule:

appropriately qualified, for a person who may be authorised to enforce a warrant, includes having the qualifications, experience or standing appropriate to enforce the warrant.

Examples

1 an enforcement officer of another court

2 a police officer

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2555 Arrest warrant for defendant—costs of enforcement

(1) Unless the court otherwise orders—

(a) the plaintiff is liable to pay to the enforcement officer the costs the enforcement officer considers appropriate for enforcing a warrant under this division for the arrest of a defendant; and

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(b) the enforcement officer may, as a condition of enforcing the warrant, require the plaintiff to give security, for the amount and in the form the enforcement officer considers appropriate, for the costs to be incurred by the enforcement officer in enforcing the warrant.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) The enforcement officer may refuse to execute a warrant if the plaintiff fails to comply with a reasonable requirement by the enforcement officer under subrule (1) (b).

2556 Arrest warrant for defendant—service of warrant and claim

A person who enforces a warrant under this division for the arrest of a defendant must, as soon as practicable after enforcing it, serve the defendant with—

(a) a copy of the warrant; and

(b) if the defendant has not been served with the originating process for which the warrant was issued—a sealed copy of the originating process.

2557 Arrest warrant for defendant—record of enforcement

A person who enforces a warrant for the arrest of a defendant must write on the warrant the time and place of enforcement.

2558 Arrest warrant for defendant—procedure after arrest

(1) A person who enforces a warrant for the arrest of a defendant must, as soon as practicable after enforcing it, take the defendant to the nearest correctional centre.

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(2) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.

(3) A warrant on which the time and place of enforcement is written is sufficient authority for the officer in charge of the correctional centre to hold the defendant in custody.

2559 Arrest warrant for defendant—release of defendant

(1) The person in charge of the correctional centre where the defendant is in custody must release the defendant if—

(a) the court orders that the defendant be released; or

(b) the plaintiff gives the enforcement officer a written consent to the defendant's release; or

(c) the warrant states an amount fixed by the court the payment of which entitles the defendant to be released and the defendant pays the amount into court or secures payment of the amount in a way that the plaintiff or enforcement officer considers satisfactory.

(2) An amount paid into court or security given under subrule (1) (c) may be paid out or released only in accordance with an order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2560 Arrest warrant for defendant—court powers

(1) The court must, on its own initiative, order that the defendant be released from custody unless satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any order that may be made.

(2) If the court is satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or

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enforcing any order that may be made, the court may, on application by the plaintiff or defendant—

(a) order that the defendant be released unconditionally from custody; or

(b) order that the defendant be released from custody subject to 1 or more of the following conditions:

(i) that the defendant undertake not to leave Australia until an amount stated by the court is paid to the plaintiff, or into court, as the court directs;

(ii) that the defendant surrender the defendant's passport to the registrar;

(iii) that the defendant give security, either with or without surety, for the payment of an amount stated by the court;

(iv) that the defendant pay a stated amount to the plaintiff;

(v) that the defendant pay a stated amount into court to await further consideration by the court; or

(c) order that the defendant be detained in custody for the period the court considers appropriate or until the defendant complies with any condition stated by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

(3) If the court makes an order under subrule (2), it may, by order, expedite the trial of the proceeding under rule 1311 (Expedited trial) and give any direction it considers appropriate for the conduct of the proceeding.

(4) The court may make an order, or give a direction, under subrule (3) on application by the plaintiff or defendant or on its own initiative.

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(5) Without limiting rule 6016 (Application in proceeding—oral application), an application for an order or direction under this rule may be made orally, unless the court otherwise orders on application by the plaintiff or defendant or on its own initiative.

2561 Arrest warrant for defendant—failure to comply with conditions

(1) The enforcement officer or a surety may, without a warrant, arrest a defendant who has been conditionally released from custody by the court under rule 2560 if the enforcement officer or surety, on reasonable grounds, suspects, that the defendant has failed or will fail to comply with a condition of the defendant's release.

(2) The enforcement officer or a surety may ask a police officer to help in the exercise of the enforcement officer's or surety's power under subrule (1).

(3) The police officer must give the enforcement officer or surety the reasonable help the enforcement officer or surety requires, if it is practicable to give the help.

(4) If the defendant is arrested under subrule (1) by the enforcement officer or a police officer, the enforcement officer or police officer must, as soon as practicable after the arrest, take the defendant to the nearest correctional centre.

(5) If the defendant is arrested under subrule (1) by a surety, the surety must, as soon as practicable after the arrest, take the defendant to an enforcement officer or a police officer who must take the defendant to the nearest correctional centre as soon as practicable.

(6) The person in charge of the correctional centre must hold the defendant in custody and, within 24 hours after the person comes into custody at the correctional centre or as soon as practicable after that time, bring the defendant before the court.

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(7) If the court is satisfied that the defendant has failed to comply or is about to fail to comply with a condition of the defendant's release, the court may, on application by the plaintiff or defendant—

(a) set aside the order under which the defendant was released; and

(b) make any order that it could make under rule 2560 (Arrest warrant for defendant—court powers).

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2562 Arrest warrant for defendant—review

(1) A defendant may, at any time and from time to time, apply to the court for an order that—

(a) the warrant be set aside; or

(b) the defendant be released from custody; or

(c) an order made under rule 2560 (Arrest warrant for defendant—court powers) be amended.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) On an application under subrule (1), the court may make any order that it could make under rule 2560.

2563 Arrest warrant for defendant—restriction on further applications

(1) This rule applies if—

(a) the court makes an order refusing to issue or set aside a warrant under this division for the arrest of a defendant; or

(b) the court makes an order that the defendant be released from custody under this division.

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(2) Within the 6-month period starting on the day the order is made, the plaintiff may apply for another warrant for the defendant's arrest in relation to the same cause of action only if the plaintiff produces evidence that was not and could not reasonably have been given when the order was made.

2564 Arrest warrant for defendant—costs

On any application under this division or at the trial or hearing of a proceeding, the court may make the order the court considers appropriate about costs, including costs payable by the plaintiff under rule 2555 (Arrest warrant for defendant—costs of enforcement).

Note Pt 6.2 (Applications in proceedings) applies to an application under this division.

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Part 2.19 Interpleader proceedings

Division 2.19.1 Stakeholder's interpleader

2600 Interpleader—application by stakeholder

(1) This rule applies if—

(a) a person other than an enforcement officer (the ***stakeholder***) is under a liability in relation to a debt or personal property (the ***disputed property***); and

(b) the stakeholder is, or expects to be, sued by 2 or more people (each of whom is a ***claimant***) making adverse claims to the disputed property.

(2) If the stakeholder is sued by a claimant in a proceeding in the court in relation to the disputed property, the stakeholder may apply to the court in that proceeding for interpleader relief.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) If subrule (2) does not apply to the stakeholder, the stakeholder may apply to the court by originating application for interpleader relief and include each claimant as a defendant.

(4) An application under this rule for interpleader relief must be supported by an affidavit.

(5) The affidavit must state that the stakeholder—

(a) claims no interest in the disputed property, other than for charges or costs; and

(b) is not in collusion with any claimant; and

(c) is willing to—

(i) pay or transfer the disputed property into court; or

(ii) dispose of the property as the court directs; or

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(iii) give security to the value of the property to the court's satisfaction.

(6) A sealed or stamped copy of the application and supporting affidavits must be served on each of the claimants.

(7) If a claimant is not a party to the proceeding, the application and supporting affidavits must be served personally.

Division 2.19.2 Enforcement officer's interpleader

2605 Interpleader—notice of claim to enforcement officer

(1) This rule applies if—

(a) an enforcement officer seizes or intends to seize personal property (the ***disputed property***) under an enforcement order; and

(b) a person (the ***claimant***) claims to be entitled to, or to have an interest in, the disputed property or the proceeds of sale of the disputed property.

(2) The claimant must give notice of the claim to the enforcement officer.

(3) The notice must—

(a) state the claimant's name and give an address for service; and

(b) identify each item of the disputed property to which the claim relates; and

(c) state the grounds of the claim.

2606 Interpleader—failure to give notice of claim

(1) This rule applies if the claimant mentioned in rule 2605 does not give notice of the claim under that rule in relation to the disputed property within a reasonable time after becoming aware that the enforcement officer has seized or intends to seize the property.

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(2) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in the court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order after the time when the claimant might reasonably have given notice of the claim.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The application must be supported by an affidavit.

(4) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the disputed property, the enforcement officer may apply to the court for an order under subrule (2) in that proceeding.

(5) If subrule (4) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (2) in the proceeding in which the enforcement order was made.

(6) An application for an order under subrule (2) and supporting affidavits must be served on the claimant personally.

2607 Interpleader—notice to enforcement creditor

(1) The enforcement officer must serve a copy of the notice under rule 2605 on the enforcement creditor not later than 4 days after the day the notice is served on the enforcement officer.

(2) The enforcement creditor may serve a notice on the enforcement officer stating that the claim is admitted.

(3) If the enforcement creditor admits the claim, the enforcement creditor is liable for the enforcement officer's costs and expenses of enforcement, including any costs of complying with rule 2608.

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2608 Interpleader—admission of claim

(1) This rule applies if the enforcement creditor admits the claimant's claim under rule 2605 by serving notice on the enforcement officer under rule 2607.

(2) The enforcement creditor is not liable to the enforcement officer for fees or expenses incurred by the enforcement officer under the enforcement order after the notice is given to the enforcement officer.

(3) The enforcement officer must—

(a) withdraw from possession of the property in relation to which the claim is admitted (the ***relevant property***); or

(b) if the relevant property has been sold—pay the proceeds of sale into court and tell the enforcement debtor and the claimant in writing that the proceeds of sale have been paid into court.

(4) On application by the enforcement officer, the court may restrain the claimant from starting or continuing a proceeding in a court against the enforcement officer in relation to anything done, or omitted to be done, by the enforcement officer in executing the enforcement order in relation to the relevant property.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) The application must be supported by an affidavit to which the notices mentioned in rule 2605 (2) and rule 2607 (2) are annexed.

(6) If the enforcement officer is sued by the claimant in a proceeding in the court in relation to the relevant property, the enforcement officer may apply to the court for an order under subrule (4) in that proceeding.

(7) If subrule (6) does not apply to the enforcement officer, the enforcement officer may apply to the court for an order under subrule (4) in—

(a) the proceeding in which the enforcement order was made; or

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(b) if a proceeding is pending in which the property's ownership is an issue—the pending proceeding.

(8) An application for an order under subrule (4) and supporting affidavits must be served on the claimant personally.

2609 Interpleader—enforcement officer's interpleader application

(1) This rule applies if—

(a) the enforcement officer has served notice of the claimant's claim on the enforcement creditor under rule 2607; and

(b) the enforcement creditor does not, before the end of 4 days after the day the notice is served, serve on the enforcement officer a notice under that rule that the enforcement creditor admits the claim; and

(c) the claimant does not afterwards withdraw the claim.

(2) The enforcement officer may apply to the court for interpleader relief.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) The application must be supported by an affidavit to which the notice mentioned in rule 2605 (2) is annexed.

(4) The application may be made only in the proceeding in which the enforcement order was made.

(5) A stamped copy of the application and supporting affidavits must be served on the enforcement creditor and claimant personally.

2610 Interpleader—enforcement debtor's rights not affected

This part does not affect a right of the enforcement debtor to bring a claim against the enforcement officer or the enforcement creditor.

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Division 2.19.3 Interpleader orders

2620 Interpleader—orders

(1) On application under division 2.19.1 (Stakeholder's interpleader) or division 2.19.2 (Enforcement officer's interpleader) for interpleader relief, the court may make the orders it considers appropriate for hearing and deciding all matters in dispute.

(2) Without limiting subrule (1), the court may do any of the following:

(a) if a proceeding is pending against the applicant in relation to any of the disputed property—order that a claimant in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the applicant, or order that the proceeding be stayed or dismissed;

(b) order that a question between claimants to the disputed property be stated and tried, direct which of the claimants is to be the plaintiff and which the defendant, and give any necessary directions for the trial;

(c) order that the applicant pay or transfer all or any of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale;

(d) if a claimant claims to be entitled to any of the disputed property by way of security for a debt—make orders for the sale of all or part of the property and for the application of the proceeds of sale;

(e) decide summarily a question of law or fact arising on the application;

(f) order that a special case be stated on a question of law under part 5.7 (Special cases);

(g) make any order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.

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2621 Interpleader—summary disposal of proceeding

The court may, having regard to the value of the disputed property, decide the claimants' claims summarily on any conditions it considers just if—

(a) the claimants consent; or

(b) a claimant applies to the court for the court to decide the claims summarily.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

2622 Interpleader—adverse claims

The applicant is not disentitled to relief only because the titles of the claimants do not have a common origin, but are adverse to and independent of one another.

2623 Interpleader—default by claimant

(1) This rule applies if—

(a) a claimant to the disputed property has been given appropriate notice of the hearing of an application for interpleader relief; and

(b) the claimant does not appear at the hearing or does not comply with an order made on an application for interpleader relief.

(2) The court may order that the claimant, and anyone claiming under the claimant, be barred from prosecuting the claim against the applicant and anyone claiming under the applicant.

(3) An order under subrule (2) does not affect the rights of the claimants as between themselves.

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2624 Interpleader—neutrality of applicant

(1) If a person (the ***stakeholder***) applies for interpleader relief under rule 2600, the court may dismiss the application or give judgment against the stakeholder unless satisfied that the stakeholder—

(a) claims no interest in the disputed property, other than for charges or costs; or

(b) is not in collusion with a claimant to the disputed property.

(2) If an enforcement officer applies for interpleader relief under rule 2609, the court may dismiss the application unless satisfied that the enforcement officer—

(a) claims no interest in the disputed property other than for charges or costs; or

(b) is not in collusion with a claimant to the disputed property.

(3) This rule does not affect the power of the court in other cases to dismiss an application for interpleader relief or to give judgment against an applicant for interpleader relief.

2625 Interpleader order—2 or more proceedings

(1) This rule applies if—

(a) an application for interpleader relief is made; and

(b) 2 or more proceedings are pending in the court for or about any or all of the disputed property; and

(c) the court makes an order in any 2 or more of the proceedings.

(2) An order is binding on all the parties to all the proceedings to which it applies.

2626 Interpleader—trial

If, in a proceeding for interpleader relief, the court directs the trial of an issue, part 2.13 (Pre-trial procedures), part 2.14 (Court

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supervision) and part 2.15 (Trial) apply to the trial with all necessary changes and subject to directions the court may give.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

2627 Interpleader—disposal of amounts in court

If an enforcement officer has paid an amount into court under rule 2608 (Interpleader—admission of claim), the court may order it be paid out to the person who is entitled to it or make an order under rule 2620 (Interpleader—orders).

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Part 2.20 Trusts, estates, accounts and inquiries

Division 2.20.1 Trusts and estates generally

Note to div 2.20.1

This division contains miscellaneous rules applying in relation to trusts and estates of deceased people. For other provisions applying to trusts and estates, see esp div 2.4.6 (Representation—trustees and personal representatives).

2700 Trusts and estates—decision without order for administration

The court need not make an order for the administration of a trust or deceased person's estate if the questions between the parties can be properly decided without the order.

2701 Trusts and estates—application not to affect powers

(1) This rule applies if an application is made in relation to a question or matter in relation to a trust or the estate of a deceased person, without administration of the trust or estate if—

(a) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

(b) there is no opposing party to the proceeding or it is not intended to serve anyone with the originating process.

Note The application may be made by originating application (see r 35 (When originating application may be used)).

(2) Unless the court otherwise orders, the making of the application does not interfere with or control any power or discretion of an executor, administrator or trustee, except as far as the interference or control is necessarily involved in the particular relief sought.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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2702 Trusts and estates—conduct of sale

(1) This rule applies if—

(a) there is a proceeding for the administration of a deceased person's estate or enforcement of the trust of a written instrument; and

(b) the court orders the sale of property vested in an executor or administrator of the estate or trustee of the trust.

(2) Unless the court otherwise orders, the conduct of the sale must be given to the executor, administrator or trustee.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Division 2.20.2 Taking of accounts

Note to div 2.20.2

For the accounts of executors, administrators and trustees, see div 2.20.4 (Executors, administrators and trustees—accounts and commission).

2720 Meaning of *accounting party*—div 2.20.2

In this division:

accounting party means the party required to account.

2721 Account—order for account

(1) If an account is claimed in the first instance or a claim involves taking an account, the court may at any stage order that an account be taken.

(2) Without limiting subrule (1), the court may order that an account be taken if—

(a) an originating application seeks the taking of an account; and

(b) the defendant fails to satisfy the court that there is a preliminary question to be decided.

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(3) An order directing that an account be taken must state—

(a) the transaction or series of transactions of which the account is to be taken; and

(b) the basis of the account; and

(c) the period of the account.

2722 Account—orders

(1) This rule applies if the court orders the taking of an account.

(2) The court may, by the same or a later order, make the orders it considers appropriate about taking or verifying the account, including, for example, orders about the following:

(a) the advertisements to be published, the evidence to be presented, the procedure to be followed, and the time and place for taking the account;

(b) if the court orders an advertisement to be published—an order excluding from the benefit of the order for the taking of the account a claimant who does not send full particulars of the claimant's claim to the person named in the advertisement, within the time stated in the advertisement;

(c) whether in taking the account the books and records of account are evidence of the matters contained in them;

(d) the people (whether or not parties to the proceeding) to be served with the order and who are entitled to be heard on the taking of the account;

(e) the people to be called as witnesses at the taking of the account;

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(f) whether an order should be given for a balance found to be owing.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for a later order.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) If the court orders that the books and records of account are evidence of the matters contained in them, the parties have leave to take objections.

2723 Accounts—service of order etc

(1) An order for the taking of an account that is to be served on a person who was not a party to the proceeding must be served personally.

(2) The account must not be taken until all necessary people have been served with the order for the taking of the account, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If the court dispenses with service, the court may also order that the people in relation to whom service is dispensed with are bound by the order for the taking of the account.

(4) An order under subrule (3) does not apply to a person if the order (or the order dispensing with service) was obtained by fraud or nondisclosure of material facts.

(5) If—

(a) the court orders the taking of an account in a proceeding for the administration of a deceased person's estate, the enforcement of the trust of a written instrument or the partition or sale of an hereditament; and

Note A hereditament is land or an interest in land that can be passed to heirs.

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(b) the court also orders that the order mentioned in paragraph (a) be served on the people interested in the estate, trust or hereditament;

everyone on whom the order is served is bound by the proceeding.

2724 Accounts—form and verification

(1) All items in an account must be numbered consecutively.

(2) The accounting party must verify the account by an affidavit and the account must be made an annexure or exhibit to the affidavit.

Note See r 6712 (Affidavit—annexures and exhibits) and r 6717 (Affidavit—alterations in).

(3) On the taking of an account, all payments over $250 must be verified by receipts.

(4) The court may order that the documents relating to an account be produced for inspection by another party at the office of the accounting party's solicitor or another convenient place, and that only the contested items be brought before the court.

2725 Accounts—filing and service

The accounting party must—

(a) file the account and verifying affidavit; and

(b) serve stamped copies on everyone entitled to be heard at the taking of the account.

2726 Accounts—challenging account

If a person challenges the accuracy of an account, the person must serve a notice on the accounting party that—

(a) states the errors or omissions claimed; and

(b) gives brief details of them.

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2727 Accounts—witness

A witness on the taking of an account or the person who made an affidavit read at the taking of an account may be examined or cross-examined on oath.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

2728 Accounts—allowances

In taking an account directed by an order, all just allowances for the expenses and claims of the accounting party may be made without a direction for the purpose.

2729 Accounts—delay

(1) If there is delay in prosecuting the taking of an account, the court may make orders for staying or expediting the proceeding, or for the conduct of the proceeding (including orders about costs).

(2) The court may make an order under this rule on the application of anyone entitled to be heard at the taking of the account or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

2730 Accounts—powers exercisable on taking account

On the taking of an account, the court may order that advertisements be published, witnesses subpoenaed, oaths administered, documents or records be produced and oral examinations conducted on oath.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

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2731 Accounts—class interests

(1) If it appears to the court that the interests of the people who are entitled to attend the taking of the account can be classified, the court may order each class to be represented by 1 solicitor and counsel.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) Despite an order under subrule (1), a person who objects to being represented as a member of a class—

(a) may be separately represented; and

(b) if separately represented, is not entitled to an order for costs and may be ordered to pay additional costs incurred by someone else because of the separate representation.

(3) The court may order separate representation for members of a class who are represented by 1 solicitor and counsel.

(4) This rule is additional to rule 259 (Representation—proceeding about administration of deceased person's estate or trust property) and rule 266 (Representation—numerous concurrent interests).

2732 Accounts—reference to judicial officer

(1) If an account is taken by the associate judge or registrar of a court, the associate judge or registrar must if asked by a person interested in the account, or may on his or her own initiative, refer to a judicial officer of the court a question arising, and the account must be taken in accordance with a direction the judicial officer gives on the reference.

(2) A direction given by the judicial officer under subrule (1) may be amended at any time until a certificate is filed of the results of the account.

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(3) This rule is additional to the following rules:

- rule 6201 (Order that jurisdiction in proceeding be exercised by judge instead of associate judge)
- rule 6202 (Associate judge referring proceeding or issue to judge)
- rule 6254 (Order that jurisdiction in proceeding be exercised by judicial officer other than registrar)
- rule 6255 (Registrar referring proceeding or issue to judicial officer).

(4) In this rule:

judicial officer means—

(a) for the associate judge—a judge; or

(b) for the registrar of the Supreme Court—a judge or the associate judge; or

(c) for the registrar of the Magistrates Court—a magistrate.

2733 Accounts—certificate about taking of account

(1) The result of the taking of an account must be stated in a certificate that must be filed in the court immediately after it is settled.

(2) Anyone who is interested in the account may apply to the court for the certificate to be set aside or amended not later than 7 days after the day the certificate is filed.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or leave under this rule.

(3) The application must state—

(a) the items objected to; and

(b) briefly, but specifically, the grounds of the objection.

(4) The court must decide the application on the same evidence as was presented at the taking of the account, unless the court gives leave for further evidence to be presented.

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(5) The certificate becomes final, and is binding on the parties, at the end of 7 days after the day it is filed in the court, unless someone applies under subrule (2) for the certificate to be set aside or amended.

(6) However, in special circumstances the court may set aside or amend the certificate after it has become final and binding.

(7) The certificate must not set out the order, the documents, evidence or reasons, but it must refer to the order or the documents or evidence so that the basis of the result of the account is stated in the certificate.

(8) The certificate must state the items allowed and disallowed.

(9) The party responsible for the prosecution of the taking of the account must prepare a draft certificate for settling by the court on at least 7 days notice to everyone who appeared at the taking of the account.

(10) The registrar must serve a stamped copy of the certificate on each party to the account.

2734 Accounts—further consideration

If a proceeding is adjourned for an account to be taken, it may be set down for further hearing not later than 7 days after the day the certificate for the account becomes final and binding.

Division 2.20.3 Making of inquiries

2740 Inquiries—procedure for inquiries

Division 2.20.2 (Taking of accounts) applies, with necessary changes, to the making of an inquiry.

2741 Inquiries—orders

(1) This rule applies if the court orders the making of an inquiry.

(2) The court may, by the same or a later order, make the orders about the making of the inquiry it considers appropriate.

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Division 2.20.4 Executors, administrators and trustees—accounts and commission

2745 Definitions—div 2.20.4

In this division:

beneficiary, of an estate or trust property, includes—

(a) a person with a beneficial interest in the estate or trust property; and

(b) for an estate—a person with a right to compel the executor or administrator of the estate to complete the administration.

estate means estate of a deceased person.

2746 Estate and trust accounts—order requiring examination and passing of accounts

(1) A beneficiary of an estate or trust property may apply to the court for an order requiring the examination and passing of accounts of the executor or administrator of the estate or the trustee of the trust property.

(2) An application by a beneficiary of an estate must be made in the proceeding in which the grant of representation for the estate was made.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) An application by a beneficiary of a trust property must be made by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

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(4) The application must be accompanied by an affidavit stating the reasons for the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the executor or administrator of the estate or the trustee of the trust property.

(6) On application under this rule, the court may make the orders it considers appropriate, including an order requiring the examination and passing of accounts.

2747 Estate and trust accounts—compliance with order for examination and passing of accounts

(1) This rule applies if the court makes an order under rule 2746 requiring the examination and passing of accounts of the executor or administrator of an estate or the trustee of a trust property.

(2) Unless the court otherwise orders, not later than 3 months after the day the order is served on the executor, administrator or trustee, the executor, administrator or trustee must—

(a) file the accounts; and

(b) make an appointment with the registrar to have the accounts examined.

(3) The executor, administrator or trustee must attend the appointment.

(4) The accounts must be—

(a) full and correct; and

(b) verified by affidavit.

Note See approved form 2.79 (Executor's, administrator's or trustee's affidavit and account) AF2006-324.

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(5) If the executor or administrator fails to comply with the order, the court may, on application by the beneficiary who applied for the order, direct that the proceeding the court considers appropriate be taken against the executor or administrator.

Note Pt 6.2 (Applications in proceedings) applies to the application.

2748 Estate and trust accounts—application for commission

(1) If an executor or administrator of an estate applies for an order for the allowance of commission out of the estate, the executor or administrator must file a full and correct account of the administration of the estate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for commission under this rule.

Note 2 See approved form 2.79 (Executor's, administrator's or trustee's affidavit and account) AF2006-324.

(2) If a trustee applies for an order for the allowance of commission out of the income or proceeds of trust property, the trustee must file a full and correct account of the trustee's administration of the trust property.

(3) An account mentioned in subrule (1) or (2) must be verified by affidavit.

2749 Estate and trust accounts—notice of filing of accounts etc

(1) This rule applies if accounts of an estate or trust property are to be examined under rule 2747 (Estate and trust accounts—compliance with order for examination and passing of accounts).

(2) At least 42 days before the date set for examining the accounts, the executor, administrator or trustee must serve on each beneficiary notice of—

(a) the filing of the accounts; and

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(b) if the executor, administrator or trustee intends to apply for the allowance of commission—the intention to apply for the commission; and

(c) the date set for examining the accounts.

Note See approved form 2.80 (Notice of filing accounts) AF2006-325.

(3) The notice must state that the beneficiary—

(a) may inspect the accounts at the registry; and

(b) may, not later than 14 days before the date set for examining the accounts, file a notice in the court stating that the beneficiary wants to be heard on the examination and passing of the accounts or allowance of commission.

(4) The notice may be served on a beneficiary by sending a copy of the notice by prepaid post, addressed to the beneficiary, at the beneficiary's address last known to the executor, administrator or trustee.

(5) Not less than 7 days before the date set for examining the accounts, the executor, administrator or trustee must file an affidavit in the court stating—

(a) that the notice required by this rule was served on each beneficiary; and

(b) the date the notice was served on each beneficiary.

2750 Estate and trust accounts—appearance of beneficiary at examination

(1) This rule applies if accounts of an executor, administrator or trustee are to be examined under rule 2747 (Estate and trust accounts—compliance with order for examination and passing of accounts).

(2) Not later than 14 days before the date set for examining the records, a beneficiary may file a notice in the court stating that the beneficiary

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wants to be heard on the examination and passing of the accounts or allowance of commission.

Note See approved form 2.81 (Notice of claim to be heard) AF2006-326.

(3) The notice must—

(a) state the beneficiary's address for service; and

Note ***Address for service*** is defined in the dictionary.

(b) be supported by an affidavit stating the nature and ground of any objection or exceptions to the accounts or allowance of commission.

(4) The beneficiary must, not later than 7 days after the day the notice is filed, serve a stamped copy of the notice and supporting affidavit on the executor or administrator of the estate or trustee of the trust property.

(5) The executor, administrator or trustee must serve a copy of the accounts on the beneficiary not later than 7 days after the day the notice and supporting affidavit are served on the executor, administrator or trustee.

(6) The registrar may order the beneficiary to serve a stamped copy of the notice and supporting affidavit on anyone else who may have a claim on, or otherwise be interested in, the estate.

2751 Estate and trust accounts—examination

At the examination of accounts of an executor, administrator or trustee under this division, the registrar must—

(a) examine the accounts; and

(b) hear—

(i) the executor, administrator or trustee; and

(ii) anyone who has filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination)

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in relation to the examination, is present and wants to be heard; and

(c) inquire into any objection or exception taken to the accounts or allowance of commission to the executor, administrator or trustee.

2752 Estate and trust accounts—conduct of examination

(1) A beneficiary of an estate or trust property—

(a) may attend before the registrar at the examination of accounts of the estate or trust property under this division; but

(b) may not object to the passing of the accounts unless the beneficiary has filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination).

(2) However, if no-one files a notice under rule 2750 in relation to the examination, the registrar may pass the accounts on the oath of the executor, administrator or trustee alone with appropriate verification.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(3) On the taking of the accounts, each payment of more than $50 must be verified—

(a) by a proper receipt signed by the person who is claimed to have received the payment; or

(b) in the way the registrar considers satisfactory.

(4) However, the accounts may be passed on the production of a certificate by a properly qualified accountant of the correctness of the accounts if—

(a) the accounts consist entirely of items of receipts and expenditure paid into and drawn out of the trust account of a solicitor for the executor, administrator or trustee; and

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(b) the trust account has been properly audited by the accountant in a way that discloses in detail the receipts and disbursements and the true position of the estate or trust property accounts.

Note See approved form 2.82 (Accountant's certificate of correctness of accounts) AF2006-327.

(5) Also, the registrar may require the accounts to be filed in the way otherwise prescribed by these rules and to be further verified.

(6) The result of the registrar's examination of the accounts must be set out in a certificate.

Note See approved form 2.83 (Registrar's certificate of examination of accounts) AF2006-328.

2753 Estate and trust accounts—application for passing accounts etc

(1) After the filing in the court of the registrar's certificate under rule 2752 (6) of the results of the examination of accounts of an executor, administrator or trustee, the executor, administrator or trustee—

(a) must apply to the court for an order that the accounts be passed; and

(b) may apply for an allowance of commission.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) Notice of the application must be served on everyone who—

(a) filed a notice under rule 2750 (Estate and trust accounts—appearance of beneficiary at examination) in relation to the examination; and

(b) is not stated in the certificate to have withdrawn the person's objection or exception.

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2754 Estate and trust accounts—passing of accounts etc

(1) On the hearing of an application under rule 2753, the court may order that the accounts be passed with or without amendment.

(2) The court may also—

(a) allow the costs of examining and passing the accounts to be paid out of the estate or trust property; and

(b) make the order for commission the court considers just; and

(c) extend the time for filing and passing further accounts.

2755 Estate and trust accounts—amended or further accounts

The court may require—

(a) an executor, administrator or trustee to amend an account; or

(b) an executor, administrator or trustee to have a further account or amended account examined and passed; or

(c) a proceeding to be taken on the account, further account or amended account as the court considers appropriate.

2756 Estate and trust accounts—renewal of objection in subsequent proceeding

(1) This rule applies if—

(a) on the examination under this division of an account of an executor, administrator or trustee, a person made an objection or exception before the registrar that was disallowed or overruled; and

(b) the account was passed under this division; and

(c) the same account is afterwards directed to be taken in a proceeding.

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(2) The person must not renew the objection or exception against the executor, administrator or trustee without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

2757 Estate and trust accounts—evidence in subsequent proceeding

(1) This rule applies if an account is passed under this division and the same account is afterwards directed to be taken in a proceeding.

(2) The evidence taken before the registrar on the examination of the account may, with all just exceptions, be read on behalf of the executor, administrator or trustee on the taking of the account in the proceeding.

(3) The order passing the account may also be read on behalf of the executor, administrator or trustee on the taking of the account in the proceeding, and is evidence on behalf of the executor, administrator or trustee of the facts stated in the account.

2758 Estate and trust accounts—general practice to apply

Unless this division otherwise provides, division 2.20.2 (Taking of accounts) applies, with any necessary changes, to the examination and passing of accounts under this division.

2759 Estate and trust accounts—combined executors' and trustees' account

(1) This rule applies if the same person is an executor and trustee or an administrator and trustee.

(2) The person may include in the same account a statement of the administration of property in both capacities.

(3) However, the person must distinguish the amounts received and disposed of by the person in each capacity.

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(4) If the person is required to give a notice under this division, the notice must indicate that it is given in relation to the estate of the deceased person and the trust.

(5) A certificate by the registrar of the registrar's examination of the account must set out separately the result of the registrar's examination of the account as far as it relates to the estate and to the trust.

2760 Trustees—allowance of commission in proceeding

(1) A trustee whose account has been taken in a proceeding in the court may apply to the court in that proceeding for the allowance of commission at any time after the account has been taken.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) Rule 2748 (Estate and trust accounts—application for commission) does not apply to the application.

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Part 2.21 Representation by solicitors

2800 Power to act by solicitor

(1) Every act required or allowed to be done by a party in the conduct of a proceeding in the court may be done by the party's solicitor.

(2) However, this rule does not apply to a document that must be signed by a party.

Examples for r (2)

1 answers to interrogatories

2 an affidavit

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

2801 Appointment of solicitor

If a solicitor signs, and files on behalf of a party to a proceeding, an originating process, notice of intention to respond, defence or other document in the proceeding, the solicitor is taken to be the party's solicitor on the record in the proceeding.

2802 Change between acting personally and acting by solicitor

(1) If a party acts in person in a proceeding and later appoints a solicitor, the solicitor must—

(a) file a notice of the solicitor's appointment; and

(b) serve a stamped copy of the notice on all other active parties.

(2) The notice must state the party's address for service.

Note See approved form 2.73 (Notice of appointment of solicitor) AF2006-318.

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(3) If a party appoints a solicitor and later decides to act in person, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.

Note 1 A party is not required to serve a stamped copy of the notice to act in person on another party to a family violence or personal violence proceeding (see r 3802 (2) (q)).

Note 2 See approved form 2.74 (Notice that party acting in person) AF2006-319.

(4) The notice must state the party's address for service.

(5) The party's former solicitor remains the solicitor on the record until the party complies with subrule (3).

2803 Change of solicitor

(1) A party may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the party.

(2) If a party appoints another solicitor, the newly appointed solicitor must—

(a) file a notice of the change of solicitor; and

(b) serve a stamped copy of the notice on all other active parties and the party's former solicitor.

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(3) The notice must state the party's address for service.

(4) The party's former solicitor remains the solicitor on the record until the newly appointed solicitor complies with subrule (2).

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2804 Removal of solicitor by court

(1) This rule applies if a solicitor for a party on the record in a proceeding loses the capacity to act as a solicitor or cannot be found, but a notice of change of solicitor or notice that the party is acting in person is not filed.

(2) A party may apply to the court for the removal of the solicitor's name from the record.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) On application under subrule (2), the court may order that the solicitor's name be removed from the record.

(4) On removal of the solicitor's name from the record, the party must—

(a) appoint another solicitor; or

(b) comply with subrule (5).

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(5) To comply with this subrule, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties.

(6) The notice must state the party's address for service.

Note See approved form 2.74 (Notice that party acting in person) AF2006-319.

2805 Solicitor removed from roll etc

(1) This rule applies if a solicitor's name is removed from the local roll under the *Legal Profession Act 2006* or a solicitor's local practising certificate under that Act is cancelled or suspended.

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(2) If a receiver is appointed under the *Legal Profession Act 2006* for the solicitor's practice, a copy of all processes and other documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.

(3) If a receiver is not appointed, rule 2808 (Effect of removal of, or leave to withdraw as, solicitor) applies with necessary changes.

2806 Application for leave to withdraw as solicitor

(1) A solicitor for a client who is a party in a proceeding in the court may apply to the court for leave to withdraw from the record in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The solicitor may apply to the court for leave to withdraw from the record only if, at least 7 days before the day the solicitor applies for leave, the solicitor gives notice (a ***notice of intention to apply for leave to withdraw***) to the client—

(a) stating the solicitor's intention to withdraw; and

(b) asking the client, not later than 7 days after the day the notice is given to the client—

(i) to appoint another solicitor; or

(ii) to file, and serve a stamped copy of, a notice that the client acts in person; and

(c) stating that, if the client does not comply with the notice—

(i) the solicitor may apply to the court for leave to withdraw; and

(ii) the client may be ordered to pay the solicitor's costs of the application.

Note See approved form 2.76 (Notice of intention to apply for leave to withdraw) AF2006-321.

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2807 Leave to withdraw as solicitor

(1) A solicitor for a client who is a party in a proceeding in the court may withdraw from the record in the proceeding only with the court's leave on application under rule 2806.

(2) If the solicitor's client does not comply with the notice of intention to apply for leave to withdraw given to the client under rule 2806, the court may give the solicitor leave to withdraw from the record and make an order for costs.

(3) On withdrawing from the record, the solicitor must—

(a) file a notice of withdrawal; and

(b) serve a stamped copy of the notice on—

(i) the party the solicitor represented in the proceeding; and

(ii) all other active parties to the proceeding.

Note See approved form 2.77 (Notice of withdrawal of solicitor) AF2006-322.

(4) The solicitor's withdrawal does not take effect until the solicitor has complied with subrule (3).

(5) On the withdrawal of the solicitor's name from the record, the party must—

(a) appoint another solicitor; or

(b) comply with subrule (6).

Note See approved form 2.75 (Notice of change of solicitor) AF2006-320.

(6) To comply with this subrule, the party must—

(a) file a notice that the party is acting in person; and

(b) serve a stamped copy of the notice on all other active parties.

Note See approved form 2.74 (Notice that party acting in person) AF2006-319.

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(7) The notice must state the party's address for service.

Note ***Address for service*** is defined in the dictionary.

2808 Effect of removal of, or leave to withdraw as, solicitor

(1) This rule applies if a solicitor for a client who is a party to a proceeding is removed from the record under rule 2804 (Removal of solicitor by court) or withdraws from the record under rule 2807 (Leave to withdraw as solicitor).

(2) The client's home or business address becomes the address for service until—

(a) another solicitor is appointed; or

(b) the client notifies another address for service in accordance with these rules.

(3) The removal, or withdrawal, of a solicitor from the record under this part does not affect the rights or liabilities of the solicitor and the party for whom the solicitor acted as between them.

2809 Withdrawal of solicitor's agent

(1) An agent solicitor of a principal solicitor in a proceeding in the court may withdraw from the record.

(2) However, the agent solicitor must not withdraw from the record unless the agent has—

(a) at least 7 days before the day the agent intends to withdraw as agent, given notice of the agent's intention to the principal solicitor; or

(b) obtained the court's leave to withdraw without giving notice under paragraph (a).

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to withdraw.

(3) The application for leave to withdraw need not be served.

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(4) On application for leave to withdraw, the court may give the solicitor leave to withdraw from the record without giving notice under subrule (2) (a).

(5) On withdrawing from the record, the agent solicitor must—

(a) file a notice of withdrawal of agent; and

(b) serve a stamped copy of the notice on all other active parties.

Note See approved form 2.78 (Notice of withdrawal of solicitor's agent) AF2006-323.

(6) The agent solicitor's withdrawal does not take effect until the agent has complied with subrule (5).

(7) If the agent solicitor withdraws from the record, the principal solicitor's business address becomes the address for service until another agent is appointed.

Note ***Address for service*** is defined in the dictionary.

2810 Solicitor not to act for adverse parties

A solicitor must not act in a proceeding for a plaintiff and a defendant, or for any 2 or more parties having adverse interests in the proceeding.

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Part 2.22 Miscellaneous—ch 2

2900 Declaratory order

(1) A proceeding is not open to objection on the ground that the only relief sought is a declaratory order.

(2) The court may make binding declarations of right, whether or not any consequential relief is claimed.

2901 Copies of documents from registrar

(1) A person may, in writing, ask the registrar for—

(a) a copy or certified copy of an order of the court in a proceeding; or

(b) a copy or certified copy of a document filed in a proceeding.

(2) The registrar must give the person the copy or certified copy asked for.

Note 1 For a family or personal violence proceeding, the registrar is not required to give a copy of a document that includes an affected person's home or work address or other information that may allow the affected person to be located (see r 3802 (2) (r)).

Note 2 A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

(3) However, the registrar must not give a copy (or certified copy) of the order or document to a person who is not a party to the proceeding unless the person appears to the registrar to have a sufficient interest in the order or document.

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2902 Searches of registers etc

(1) A person may, in writing, ask the registrar to search the registers, indexes or calendars of the court.

(2) The registrar may—

(a) comply with the request; and

(b) issue a certificate of the result of the search.

Note A fee may be determined under the *Court Procedures Act 2004*, s 13 for this provision.

2903 Inspection of registry files

(1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry.

Note 1 For a family or personal violence proceeding, a party to the proceeding may inspect, or take a copy of, a document filed in the registry provided the document does not include an affected person's home or work address or other information that may allow the affected person to be located (see r 3802 (2) (s)).

Note 2 Rule 4053 (Criminal proceedings—inspection of registry files) applies to documents filed in criminal proceedings.

(2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person appears to the registrar to have a sufficient interest in the document or the court gives leave:

(a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;

(b) an affidavit that has not been read in court;

(c) a part of an affidavit ruled to be inadmissible in evidence;

(d) an interrogatory, or an answer to an interrogatory, that has not been admitted into evidence;

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(e) a list of documents given on discovery;

(f) an admission that has not been admitted into evidence;

(g) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

(h) an application for leave to serve a subpoena in New Zealand;

(i) a document in relation to a proceeding about the adoption, custody or guardianship of a child;

(j) a document in relation to a proceeding under the *Family Law Act 1975* (Cwlth);

(k) a document filed in the probate jurisdiction, other than—

(i) a grant of probate or letters of administration; or

(ii) an order to administer an estate; or

(iii) a proceeding about a contested matter;

(l) a deposition taken before an examiner;

(m) a document filed in support of an application made in the absence of a party;

(n) a written submission that has not been read in court;

(o) an unsworn statement of evidence;

(p) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

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(3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

(5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production;

(c) an application for leave to serve a subpoena in New Zealand.

(6) Before considering an application for leave under subrule (3), the court may require the applicant for leave to do either or both of the following:

(a) give notice of the application for leave to a party to the relevant proceeding or another interested person;

(b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

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(7) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

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Chapter 3 Particular civil proceedings

Part 3.1 Administration and probate

Division 3.1.1 Administration and probate—general

Note to div 3.1.1

For provisions about accounts and commission, see div 2.20.4 (Executors, administrators and trustees—accounts and commission).

3000 Definitions—pt 3.1

In this part:

Administration and Probate Act means the *Administration and Probate Act 1929*.

administration bond—see rule 3045 (Administration bond—requirement for bond).

estate means estate of a deceased person.

3001 Terms used in Administration and Probate Act

A term used in the Administration and Probate Act has the same meaning in this part.

Note For example, the following terms are defined in the Administration and Probate Act, dictionary:

- administration
- administrator
- distribute
- representation
- will.

3002 Application—pt 3.1

This part applies only in relation to the Supreme Court.

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Division 3.1.2 Application for grant of representation

3005 Grant of representation—application

(1) A proceeding for grant of representation for an estate must be started by originating application.

Note 1 See

- approved form 3.1 (Originating application—probate) AF2017-160
- approved form 3.2 (Originating application—letters of administration—with will) AF2017-161
- approved form 3.3 (Originating application—letters of administration—no will) AF2017-162.

Note 2 For notice of the application, see the following rules:

- r 3006 (Grant of representation—notice of intention to apply to be published in newspaper etc)
- r 3007 (Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin)
- r 3008 (Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (Grant of representation—when notice of intention to apply to be served on public trustee and guardian).

(2) The application must be accompanied by—

(a) a draft of the grant of representation sought, in duplicate; and

Note See

- approved form 3.4 (Grant of probate) AF2017-163
- approved form 3.5 (Grant of letters of administration—with will) AF2017-164
- approved form 3.6 (Grant of letters of administration—no will) AF2017-165.

(b) a supporting affidavit; and

Note Rule 3010 (Grant of representation—supporting affidavit for application) deals with the contents of the supporting affidavit.

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(c) for an application for grant of probate or letters of administration with the will annexed—

(i) if the application is made by the public trustee and guardian—the original will, or a copy of the original will kept in electronic form certified by the public trustee and guardian, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; or

(ii) in any other case—the original will, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; and

(d) an affidavit of search; and

Note Rule 3011 (Grant of representation—affidavit of search) deals with the contents of the affidavit of search.

(e) any other affidavit required by a territory law; and

(f) anything else required under a territory law.

Note 1 Div 3.1.4 (Validity and form of wills) contains provisions requiring other affidavits in certain circumstances.

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

(3) If a copy of an original will kept in electronic form, certified by the public trustee and guardian, accompanies the application, the public trustee and guardian must, if the court directs, produce the original will to the court.

(4) If the application is for grant of probate or letters of administration with the will annexed, a copy of the will must be attached to each copy of the draft of the grant of representation sought.

(5) The application and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

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(6) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

3006 Grant of representation—notice of intention to apply to be published in newspaper etc

(1) A person intending to apply for grant of representation for an estate must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note See

- approved form 3.7 (Notice of intention to apply for probate) AF2006-335
- approved form 3.8 (Notice of intention to apply for letters of administration—with will) AF2006-336
- approved form 3.9 (Notice of intention to apply for letters of administration—no will) AF2006-337.

(2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.

(3) The notice must include—

(a) the name, including any known alias, of the deceased person in relation to whom the grant is to be sought; and

(b) if the deceased person left a will—

(i) the deceased person's address as shown in the will and, if different, the deceased person's last-known address; and

(ii) the date of the will and any other testamentary documents for which the grant of representation is sought; and

(c) if the deceased person did not leave a will—the deceased person's last-known address; and

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(d) an address for service for the person intending to apply for the grant; and

Note ***Address for service*** is defined in the dictionary.

(e) a statement requiring creditors of the estate to send particulars of their claims to the address for service included in the notice; and

(f) if an administration bond is required under rule 3045 (Administration bond—requirement for bond) and the person giving the notice wants to ask the court for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under rule 3046 (Administration bond—dispensing with bond)—a statement of the proposed request.

(4) If the court is not satisfied that a notice published under subrule (1) is sufficient advertisement of a person's intention to apply for a grant of representation, the court may, on its own initiative, require any other notice it considers appropriate.

3007 Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin

(1) This rule applies to an application for grant of administration of the estate of a deceased person made by only 1 or some of the people entitled to be administrators of the estate.

Note See the Administration and Probate Act, s 12 for the people eligible to be administrators.

(2) At least 14 days before the day the application is filed in the court, the applicant must serve notice of the application on each person (a ***relevant person***) who—

(a) is a domestic partner or next of kin of the deceased person; and

(b) if the person is a next of kin of the deceased person—is an adult; and

(c) is not the applicant or 1 of the applicants; and

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(d) has not consented to the application.

Note 1 See approved form 3.10 (Consent to administration of estate) AF2017-166.

Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(3) For each relevant person, either—

(a) the application must be accompanied by the consent, by affidavit, of the relevant person to the application; or

(b) the supporting affidavit for the application must state that the relevant person—

(i) has been served with notice of the application in accordance with subrule (2); or

(ii) cannot be found.

3008 Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin

(1) This rule applies to an application for grant of administration of the estate of a deceased person made by a person as a creditor of the deceased person.

(2) At least 14 days before the day the application is filed, the applicant must serve notice of the application, and a copy of the supporting affidavit to accompany the application, on each person (a ***relevant person***) who—

(a) is a domestic partner or next of kin of the deceased person; and

(b) if the person is a next of kin of the deceased person—is an adult; and

(c) is not the applicant or 1 of the applicants; and

(d) has not consented to the application.

Note 1 See approved form 3.10 (Consent to administration of estate) AF2006-338.

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Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(3) For each relevant person, either—

(a) the application must be accompanied by the consent, by affidavit, of the relevant person to the application; or

(b) the supporting affidavit for the application must state that the relevant person—

(i) has been served with notice of the application, and a copy of the supporting affidavit to accompany the application, in accordance with subrule (2); or

(ii) cannot be found.

3009 Grant of representation—when notice of intention to apply to be served on public trustee and guardian

(1) This rule applies to an application for grant of representation of the estate of a deceased person made by someone other than the public trustee and guardian if the court has made an order under the Administration and Probate Act, section 88 (Orders to public trustee and guardian to collect and administer) for the public trustee and guardian to collect and administer an estate.

(2) At least 14 days before the day the application is filed, the applicant must serve notice of the application, and a copy of the supporting affidavit to accompany the application, on the public trustee and guardian.

(3) Either—

(a) the application must be accompanied by the written consent of the public trustee and guardian to the application; or

(b) the supporting affidavit for the application must state that the public trustee and guardian has been served with notice of the application in accordance with subrule (2).

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(4) To remove any doubt, a copy of the supporting affidavit served under this rule need not include details about the service of the notice and the supporting affidavit.

3010 Grant of representation—supporting affidavit for application

(1) An affidavit made by a person supporting an application by the person for grant of representation for the estate of a deceased person must state the following:

(a) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased person;

(b) if the applicant is an individual—that the applicant is an adult;

(c) the relationship (if any) of the applicant to the deceased person;

(d) if a death certificate for the deceased person is annexed to the affidavit—that the deceased person is the person named in the death certificate;

(e) if the application is made, for the first time, more than 6 months after the date of the deceased person's death—the reasons for the delay;

(f) whether the deceased person left property in the ACT;

(g) if the deceased left property in the ACT—the estimated gross value of the property in the ACT;

(h) whether the deceased person considered that the person's domicile was in the ACT;

(i) if the application is made by the applicant as a guardian of a person to whom rule 3116 (Grant of administration—grant to child) applies—evidence that the applicant is the person's guardian;

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(j) if the application is made by the applicant as a creditor of the deceased person—the following particulars:

(i) that the applicant is a creditor of the deceased person;

(ii) the amount of the debt owed by the deceased person to the applicant;

(iii) the particulars of the debt;

(k) that, if the applicant is granted probate of the will or administration of the estate, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;

(l) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper;

(m) brief details of any responses to the publication of the notice from creditors of the estate.

Note 1 See

- approved form 3.11 (Affidavit of applicant for probate) AF2017-167
- approved form 3.12 (Affidavit of applicant for administration—with will) AF2017-168
- approved form 3.13 (Affidavit of applicant for administration—no will) AF2017-169.

Note 2 The following provisions may require additional matters to be dealt with in the supporting affidavit:

- r 3007 (3) (b) (Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin)
- r 3008 (3) (b) (Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin)
- r 3009 (3) (b) (Grant of representation—when notice of intention to apply to be served on public trustee and guardian).

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(2) If the applicant is applying for grant of probate or letters of administration with the will annexed for the estate of the deceased person, the affidavit must also state the following:

(a) the document accompanying the application and signed in the margin by the applicant and the person taking the affidavit is the last will of the deceased person;

(b) if the application is for grant of probate—the applicant is the executor, or 1 of the executors, named in the will;

(c) the will has not been revoked;

(d) the applicant is, or is not, aware of the existence of any other document claiming to contain the testamentary intentions of the deceased person;

(e) the steps taken to find out whether there is any other document mentioned in paragraph (d);

(f) how the applicant identified the will;

(g) the names of the people who attested the will;

(h) the names and addresses (if known) of the people named in the will as the executors;

(i) if the application is not made by the executor or all of the executors of the will—the reason the executor is not, or the other executors are not, applying for probate;

(j) whether the deceased person married or entered into a civil union or civil partnership after the will was made and, if so, the date of the marriage or civil union or civil partnership and the name of the spouse or civil union partner or civil partner;

(k) if under the *Wills Act 1968*, section 20A (Effect of termination of marriage, civil union or civil partnership), the deceased person's marriage, civil union or civil partnership is taken to have been terminated—the date of the termination;

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Note 1 The *Wills Act 1968*, s 20A (4) provides that a marriage is taken to be terminated if—

(a) the marriage ends by divorce under the *Family Law Act 1975* (Cwlth); or

(b) a decree of nullity is made under the *Family Law Act 1975* (Cwlth) in relation to the marriage; or

(c) the marriage is annulled in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the *Family Law Act 1975* (Cwlth).

Note 2 The *Wills Act 1968*, s 20A (4) provides that a civil union is taken to be terminated if the civil union ends under the *Civil Unions Act 2012*, div 2.4 (otherwise than on the death of a party to the civil union).

Note 3 The *Wills Act 1968*, s 20A (4) provides that a civil partnership is taken to be terminated if the civil partnership ends under the *Domestic Relationships Act 1994*, div 4A.4 (otherwise than on the death of a party to the civil partnership).

(l) whether the deceased person was an adult when the person made the will or whether the person made the will in accordance with the *Wills Act 1968*, section 8 (Children—testamentary capacity).

(3) If the applicant is applying for letters of administration without the will annexed for the estate of the deceased person, the affidavit must state the following:

(a) the deceased person did not leave a will;

(b) the applicant is, or is not, aware of the existence of any document claiming to contain the testamentary intentions of the deceased person;

(c) the steps taken to find out whether the deceased person left a will and whether there is any other document mentioned in paragraph (b);

(d) the names of everyone with a beneficial interest in the estate;

(e) the interest of everyone with a beneficial interest in the estate.

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(4) If a statement required to be included in the supporting affidavit can only be made (or would be more appropriately made) by a person other than the applicant, the statement must be included in a separate supporting affidavit made by that person and filed with the application.

(5) If a supporting affidavit contains statements of information and belief, the person making the affidavit must state the sources of the information and the reasons for the belief.

(6) The following documents must be annexed to the supporting affidavit (or a relevant supporting affidavit):

(a) any death certificate (or a certified copy of any death certificate) issued for the deceased person under the *Births, Deaths and Marriages Registration Act 1997* or a corresponding law of another jurisdiction;

(b) any document (other than the last will of the deceased person) claiming to contain the testamentary intentions of the deceased person that is in the possession of the applicant or other person making the affidavit;

Note ***Possession*** is defined in the dictionary.

(c) an inventory of the property of the estate;

(d) a copy of the notice (or each notice) required by rule 3006 (Grant of representation—notice of intention to apply to be published in newspaper etc);

(e) if the application is made by the applicant as a creditor of the deceased person—documents sufficient to prove the deceased person's debt to the applicant;

(f) for each person with a beneficial interest in the estate—documents sufficient to prove the person's identity and the relationship (if any) of the person to the deceased person.

Note See also div 3.1.4 (Validity and form of wills).

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3011 Grant of representation—affidavit of search

An affidavit of search accompanying an application for grant of representation for the estate of a deceased person must state that the person making the affidavit has arranged for a search of the registry and, based on information given to the person and the person's belief, made the following findings:

(a) that a caveat against the application has, or has not, been filed in the court and, if a caveat has been filed, details of the caveat and whether it is still in force;

(b) that another application for grant of representation for the estate has, or has not, been made and, if another application has been made, details of the application and the results of the application;

(c) that a grant of representation has, or has not, been granted by the court for the estate and, if representation has been granted, details of the representation and whether the representation is still in force.

Note See approved form 3.14 (Affidavit of search) AF2017-170.

3012 Grant of representation—proof of identity and death

(1) This rule applies if an application is made for grant of representation for the estate of a deceased person.

(2) The court may require further proof of the identity of the deceased person or the applicant.

(3) The court may, on application, allow a death to be proved otherwise than by a death certificate.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

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3013 Grant of representation—further evidence, documents and notices

(1) This rule applies if an application is made for grant of representation for the estate of a deceased person.

(2) The court may require, on its own initiative or on application by an interested person, further evidence to be given, further documents to be filed and notices to be given, that it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3014 Grant of representation—no grant to executor etc who has renounced

(1) A person may renounce probate of the will or administration of the estate of a deceased person by affidavit.

Note See approved form 3.15 (Renunciation of probate) AF2017-171.

(2) If a person renounces probate of the will or administration of the estate of a deceased person, the person must not be granted representation of the estate in another capacity.

3015 Grant of representation—when hearing not required

Unless a caveat is in force in relation to the application or division 3.1.9 (Other probate proceedings) applies to the application, the court may grant representation for the estate without a hearing.

Division 3.1.3 Application for reseal of foreign grant

3020 Reseal of foreign grant—application

(1) An application under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction) must be made by originating application.

Note See approved form 3.16 (Originating application—reseal of foreign grant) AF2017-172.

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(2) The application must be accompanied by—

(a) a draft of the reseal sought, in duplicate, with a copy of the grant of probate or administration, or order to collect and administer, sought to be resealed attached; and

Note See approved form 3.17 (Reseal of foreign grant) AF2017-173.

(b) a copy of the grant or order mentioned in paragraph (a) sealed, or certified, by the court that made it; and

(c) a supporting affidavit; and

Note Rule 3022 (Reseal of foreign grant—supporting affidavit for application) deals with the contents of the supporting affidavit.

(d) an affidavit of search; and

Note Rule 3023 (Reseal of foreign grant—affidavit of search) deals with the contents of the affidavit of search.

(e) anything else required under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(3) The application and the documents accompanying it need not be served on anyone unless the court otherwise orders on its own initiative.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

3021 Reseal of foreign grant—notice of intention to apply to be published in newspaper etc

(1) A person intending to make an application under the Administration and Probate Act, section 80 must publish notice of the person's intention to apply in a daily newspaper circulating generally in the ACT.

Note See approved form 3.18 (Notice of intention to apply for reseal of foreign grant) AF2006-346.

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(2) The notice must be published not less than 14 days, and not more than 3 months, before the day the application is made.

(3) The notice must include—

(a) the name, including any known alias, of the deceased person in relation to whom the application is to be made; and

(b) an address for service for the person intending to make the application.

Note ***Address for service*** is defined in the dictionary.

(4) If the court is not satisfied that a notice published under subrule (1) is sufficient advertisement of a person's the intention to make an application under the Administration and Probate Act, section 80, the court may, on its own initiative, require any other notice it considers appropriate.

3022 Reseal of foreign grant—supporting affidavit for application

(1) An affidavit made by a person supporting an application by the person under the Administration and Probate Act, section 80 must state the following:

(a) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of a deceased person has been granted or made by a court of competent jurisdiction in a reciprocating jurisdiction;

(b) the name of the court that made the grant or order and the date the grant or order was made;

(c) that the grant or order has not been revoked;

(d) whether the applicant is the person to whom the grant was made or for whom the order was made;

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(e) if the applicant is not that person—whether the applicant is authorised, under a power of attorney, by that person to make the application and, if so, that the applicant has not been given notice of revocation of the power of attorney;

(f) whether the deceased person left property in the ACT;

(g) if the deceased left property in the ACT—the estimated gross value of the property in the ACT;

(g) that, if the application is granted, the applicant will administer the estate according to law and, if required, will give an account of the administration to the court;

(h) notice of intention to make the application was published in a daily newspaper circulating generally in the ACT, the date the notice was published and the name of the newspaper;

(i) for each notice required under rule 3021 (4) (Reseal of foreign grant—notice of intention to apply to be published in newspaper etc)—how the requirement for the notice was complied with.

Note See approved form 3.19 (Affidavit of applicant for reseal of foreign grant) AF2017-174.

(2) If the supporting affidavit contains statements of information and belief, the applicant must state the sources of the information and the reasons for the belief.

(3) the following documents must be annexed to the supporting affidavit:

(a) a copy of the notice (or each notice) required by rule 3021;

(b) an inventory of the property of the estate in the ACT;

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3023 Reseal of foreign grant—affidavit of search

An affidavit of search accompanying an application under the Administration and Probate Act, section 80 in relation to the estate of a deceased person must state that the person making the affidavit has arranged for a search of the registry and, based on information given to the person and the person's belief, made the following findings:

(a) that a caveat against the application has, or has not, been filed in the court and, if a caveat has been filed, details of the caveat and whether it is still in force;

(b) that another application under the Administration and Probate Act, section 80 has, or has not, been made in relation to the estate and, if another application has been made, details of the application and the results of the application;

(c) probate of the will, letters of administration of the estate, or an order to collect and administer the estate, of the deceased person has, or has not, been resealed by the court and, if it has been, details of the resealing and whether it is still in force.

Note See approved form 3.20 (Affidavit of search—reseal of foreign grant) AF2017-175.

3024 Reseal of foreign grant—when hearing required

(1) This rule applies to an application under the Administration and Probate Act, section 80 (Resealing of grant made in reciprocating jurisdiction).

(2) Unless a caveat is in force in relation to the application or division 3.1.9 (Other probate proceedings) applies to the application, the court may grant the application without a hearing.

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Division 3.1.4 Validity and form of wills

3030 Grant of representation—evidence of proper attestation of will

(1) This rule applies if a person applies for grant of probate or administration of a will.

(2) If it appears to the court that the will has been attested in the way required by law, the court may accept the attestation as evidence of the proper making of the will.

(3) If there is no attestation clause or the attestation clause does not show how the will was made, the applicant must file an affidavit made by a witness who attested the will stating how the will was made.

(4) However, if it is not practicable to comply with subrule (3) because, for example, the witnesses who attested the will are dead, the applicant must file an affidavit made by someone else present when the will was made and stating how the will was made.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) If it is not practicable for the applicant to comply with subrule (4) because, for example, no-one else was present when the will was made, the applicant must file an affidavit stating why it is not practicable and, if possible, giving evidence of the handwriting of the witnesses.

(6) The applicant must also state in the affidavit anything else relevant about the making of the will.

3031 Grant of representation—will by blind or illiterate person

(1) This rule applies if a person applies for grant of probate or administration of a will that—

(a) has been made by a blind or apparently illiterate testator; or

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(b) appears to have been signed by someone else on behalf of the testator; or

(c) was made under circumstances that raise doubt about whether the testator knew or approved of the will's contents.

(2) The applicant must file an affidavit giving evidence that, when the testator signed the will, the testator knew and approved of its contents.

(3) If an affidavit mentioned in subrule (2) is made by a witness who attested the will or by someone else present when the will was made, the affidavit must state how the will was made.

(4) However, unless the court otherwise orders on application by an interested person or on its own initiative, it is not necessary to obtain evidence of the making of a blind or apparently illiterate testator's will if—

(a) the will specifically states the testator is blind or apparently illiterate; and

(b) the attestation of the witnesses who signed the will acknowledges that the testator knew and approved of the contents of the will.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3032 Grant of representation—alterations in will

(1) This rule applies if a person applies for grant of probate or administration of a will that appears to have been altered.

(2) The court may require evidence about the alteration.

(3) The court must not include the alteration in a grant of representation unless the alteration—

(a) was in the will when the will was made; or

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(b) if made afterwards—was made and attested in a way required by law; or

Note The *Wills Act 1968*, s 12 (Alteration in will) deals with the validity of alterations made after the execution of the will.

(c) was made valid by the remaking of the will or a later codicil.

(4) If it is not shown when the alteration was made, and the words altered can, on inspection, be easily worked out, the original words may be included in the grant of representation.

(5) If the erased words may have been of importance, the erasure must be explained by evidence.

(6) In this rule:

alter includes alter by omission, substitution or addition.

3033 Grant of representation—documents mentioned in or attached to will

(1) This rule applies if a person applies for grant of probate or administration of a will.

(2) If the will mentions another document and raises a question whether the document does or does not form part of the will, the applicant must produce the other document or, if possible, explain its absence.

(3) The court must not include in a grant of representation a document mentioned in the will unless it appears to the court to have been in existence when the will was made.

(4) If there is any evidence supporting the inference that any paper may have been attached to the will, the applicant must produce the paper or, if possible, explain its absence.

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3034 Grant of representation—evidence of proper execution of will etc

(1) This rule applies if a person applies for grant of probate or administration of a will and—

(a) the court considers that—

(i) there is doubt about the proper execution or attestation of the will; or

(ii) any circumstances in relation to the making of the will need explanation; or

(iii) there is doubt about the date the will was made; or

(b) the will is undated.

(2) The court may, by order, require evidence about the execution, attestation or making of the will, including the date the will was made.

(3) The court may make an order under subrule (2) on application by an interested person or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.

(4) The court may make an order under subrule (2) even though the following rules may have been complied with:

- rule 3030 (Grant of representation—evidence of proper attestation of will)
- rule 3031 (Grant of representation—will by blind or illiterate person).

3035 Grant of representation—will inoperative or partly inoperative

(1) This rule applies if—

(a) a person applies for grant of probate or administration of a will of a deceased person; and

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(b) it appears to the court that the will is inoperative or partly inoperative.

(2) The court may require the applicant to file an affidavit stating what, if any, domestic partner, next of kin or other relatives survived the deceased person so far as known and material in law to the right to administer or share in the estate.

Division 3.1.5 Administration bonds

3045 Administration bond—requirement for bond

(1) This rule applies if a person applies for grant of letters of administration without the will annexed for the estate of a deceased person.

(2) As a condition of granting administration to the person, the court may require 1 or more sureties acceptable to the court to guarantee by bond (an ***administration bond***) that they will make good, up to the required amount, any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

Note See approved form 3.21 (Administration bond) AF2017-176.

(3) However, an administration bond must not be required if administration is granted to—

(a) a person on behalf of the Territory, the Commonwealth, a State or another Territory; or

(b) the public trustee and guardian of the Territory, a State or another Territory; or

(c) a trustee company.

(4) An administration bond for an estate has effect for the benefit of everyone interested in the administration of the estate as if contained in a deed made by the surety or sureties with each interested person

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and, if there are 2 or more sureties, as if they had bound themselves jointly and severally.

(5) On application by the administrator or on its own initiative, the court may decide that the required amount for an administration bond for an estate is less than the value of the estate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(6) In this rule:

required amount, for an administration bond for an estate, means—

(a) the value of the estate; or

(b) a lesser amount decided by the court under subrule (5); or

(c) if the value of the estate is less than $10 000—a lesser amount decided by the registrar.

3046 Administration bond—dispensing with bond

(1) This rule applies in relation to an estate if—

(a) all or any part of the estate passes to the person to whom administration is granted; or

(b) all or any part of the estate passes to beneficiaries who are of full legal capacity and the beneficiaries consent, in writing, to the administration bond for the estate being dispensed with.

(2) On application by an administrator or beneficiary or on its own initiative, the court may dispense with the administration bond in relation to the estate or part of the estate.

(3) The application may be made in the application for letters of administration or by application in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application in the proceeding for an order to dispense with an administration bond.

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3047 Administration bond—affidavit of justification

(1) A surety, other than an exempt surety, must justify by affidavit.

Note See approved form 3.22 (Affidavit of justification) AF2017-177.

(2) A surety that is a corporation must make an affidavit by a proper officer.

(3) An affidavit by a surety for an administration bond must contain enough information about the surety's financial position to satisfy the registrar that the surety can meet any claim under the bond.

(4) The registrar may accept an affidavit of justification from a corporation at least once every year instead of requiring an affidavit in every case that the corporation is a surety.

(5) The registrar may require a surety for an administration bond who justifies by affidavit to give the registrar further information if there is not enough information in the affidavit for the registrar to be satisfied that the surety can meet any claim under the bond.

(6) The further information must be given in the way the registrar requires, either—

(a) by another affidavit; or

(b) by the oral examination of the person who made the affidavit of justification on oath before the registrar.

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(7) In this rule:

exempt surety means—

(a) an authorised deposit-taking institution; or

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(b) an entity declared by the registrar under rule 3048 (1) to be an exempt surety.

Note ***Authorised deposit-taking institution*** is defined in the Legislation Act, dict, pt 1 as an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

3048 Administration bond—exempt surety

(1) The registrar may declare an entity to be an exempt surety.

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

3049 Administration bond—addition or reduction after required but before given

(1) This rule applies if the court requires an administration bond under rule 3045 (Administration bond—requirement for bond) for an estate to be given by a surety or sureties for a particular amount.

(2) On the application of anyone interested in the estate or on its own initiative on the registrar's report, the court may, at any time before the bond has been given by the surety or sureties, order that the amount be reduced or increased.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

(3) However, application must not be made if the court has made a decision about the amount under rule 3045 (5).

(4) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the court makes an order under subrule (2) that the amount be increased; and

(b) the surety or sureties will not guarantee the increased amount; and

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(c) the administrator does not produce another surety or other sureties to cover the increased amount.

(5) In this rule:

required amount—see rule 3045 (6).

3050 Administration bond—addition or reduction after given

(1) This rule applies if an administration bond is given under rule 3045 (Administration bond—requirement for bond) for an estate.

(2) On the application of anyone interested in the estate or on its own initiative on the registrar's report, the court may, at any time—

(a) require the surety or sureties to give an additional administration bond; or

(b) order that the liability of a surety under the bond be reduced by a stated amount.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the additional administration bond is not given by the surety or sureties; and

(b) the administrator does not produce another surety or other sureties to give the additional bond.

(4) For these rules, an additional administration bond under this rule is taken to be an administration bond under rule 3045.

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3051 Administration bond—proceeding on bond

(1) A proceeding on an administration bond may only be started with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to start a proceeding on an administration bond.

(2) A stamped copy of the application and supporting affidavits must be served on the administrator and surety.

3052 Administration bond—application by surety

On application by a surety to an administration bond, the court may grant the relief it considers appropriate if it appears to the court that either or both of the following apply:

(a) the estate is being wasted, or is in danger of being wasted;

(b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or omission of the person administering the estate.

Note Pt 6.2 (Applications in proceedings) applies to an application for relief under this rule.

3053 Administration bond—reseal of foreign grant

This division applies, with any necessary changes, to the sealing of letters of administration, or order to collect and administer an estate, under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction).

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Division 3.1.6 Administration by public trustee and guardian

3055 Administration by public trustee and guardian—application

(1) An application by the public trustee and guardian under the Administration and Probate Act, section 88 (Orders to public trustee and guardian to collect and administer) to collect and administer the estate of a deceased person must be supported by an affidavit stating—

(a) the person has died, and the date and place of the person's death; and

(b) whether the person died with or without leaving a will; and

(c) whether the person left real or personal property in the ACT; and

(d) the names of any surviving domestic partner or next of kin.

Note 1 See approved form 3.23 (Affidavit in support of application by public trustee and guardian) AF2017-178.

Note 2 For the meaning of ***domestic partner***, see the Legislation Act, s 169.

(2) The affidavit may include anything else the public trustee and guardian considers necessary.

3056 Administration by public trustee and guardian—renunciation of probate by executors

(1) This rule applies if the executors of the will of a deceased person want to renounce their rights to apply for probate in favour of the public trustee and guardian.

(2) The executors must give the public trustee and guardian a notice of renunciation by affidavit.

Note See approved form 3.24 (Notice of renunciation of probate in favour of public trustee and guardian) AF2017-179.

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(3) The public trustee and guardian must file the notice of renunciation in the court.

3057 Administration by public trustee and guardian—renunciation of letters of administration by entitled people

(1) This rule applies if—

(a) a person died without leaving a will; and

(b) the people primarily entitled to administration of the deceased person's estate want to renounce their rights to letters of administration in favour of the public trustee and guardian.

(2) The people must give the public trustee and guardian notice of renunciation by affidavit.

Note See approved form 3.25 (Notice of renunciation of letters of administration in favour of public trustee and guardian) AF2017-180.

(3) The public trustee and guardian must file the notice of renunciation in the court.

3058 Administration by public trustee and guardian—service of documents on public trustee and guardian

(1) This rule applies if—

(a) the public trustee and guardian is administering an estate; and

(b) someone else brings a proceeding in a court in relation to the estate; and

(c) the public trustee and guardian is not a party to the proceeding.

(2) A sealed or stamped copy of every document filed in the proceeding must be served on the public trustee and guardian.

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Division 3.1.7 Caveats

3065 Definitions—div 3.1.7

In this division:

caveator means a person who files a caveat in the court under this division.

grant of representation, for an estate, includes a resealing by the court of a grant of probate or administration, or of an order to collect and administer, for the estate made by a court of competent jurisdiction of a reciprocating jurisdiction.

3066 Caveat—filing

(1) A person claiming to have an interest in an estate may file a caveat in the court.

Note See approved form 3.26 (Caveat) AF2017-181.

(2) A caveat may be—

(a) a caveat against a grant of representation for the estate; or

(b) a caveat requiring proof in solemn form of any will of the deceased person; or

(c) a caveat against distribution of the estate.

(3) A caveat mentioned in subrule (2) (a) or (b) may be filed at any time before a grant of representation is made for the estate.

(4) A caveat mentioned in subrule (2) (c) may be filed at any time before the estate has been fully distributed.

(5) The caveat must state fully the nature of the caveator's interest and the grounds of the caveator's objection.

(6) If probate or letters of administration is sought in relation to a will (including a document claiming to contain the testamentary intentions

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of the deceased person), the grounds of objection may be stated as follows:

(a) that there is a later will executed, or act of revocation or made, on a stated date;

(b) that the will was not executed by the testator;

(c) that the will was not executed in accordance with a stated provision of the *Wills Act 1968*;

(d) that the document for which probate or administration is sought was not executed in accordance with the *Wills Act 1968* and was not intended by the deceased person to be the deceased person's will;

(e) that the testator lacked testamentary capacity at the time of execution of the will;

(f) that the testator executed the will under the undue influence of a named person.

(7) If a grant of representation is sought for an intestate estate, the grounds of objection may be stated as follows:

(a) that a will executed on a stated date exists;

(b) that the applicant for the grant of representation does not have the capacity or stand in the relationship for which the applicant seeks administration;

(c) that the caveator or someone else seeking administration has a better stated right;

(d) that the proposed administrator is disqualified because of a stated reason.

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(8) Subrules (6) and (7) do not limit the grounds of objection that may be stated in a caveat.

(9) The caveat must give an address for service of the caveator.

Note ***Address for service*** is defined in the dictionary.

3067 Caveat—service

(1) If a person who files a caveat mentioned in rule 3066 (2) (a) or (b) in relation to an estate knows that someone else is making or intending to make application for grant of representation for the estate, the person must serve a stamped copy of the caveat on the other person as soon as possible, but no later than 7 days after the day the caveat is filed.

(2) If a person who files a caveat mentioned in rule 3066 (2) (c) in relation to an estate knows that someone else is distributing or intending to distribute the estate, the person must serve a stamped copy of the caveat on the other person as soon as possible, but no later than 7 days after the day the caveat is filed.

3068 Caveat—period of operation

(1) A caveat takes effect when it is filed in the court.

(2) A caveat remains in force for 6 months unless it is set aside or withdrawn under this division.

(3) A caveat may be renewed by filing a new caveat in the court.

3069 Caveat—setting aside

(1) If—

(a) a person has applied or intends to apply for grant of representation for an estate; and

(b) a caveat is in force in relation to the granting of representation for the estate;

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the person may apply to the court for an order setting aside the caveat.

(2) If the person has applied for grant of representation, the application must be made in that proceeding.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) If the person intends to apply for grant of representation, the application must be made by originating application, naming the caveator as a defendant.

(4) The court may set aside the caveat if it considers that the evidence does not—

(a) show that the caveator has an interest in the estate or a reasonable prospect of establishing an interest; or

(b) raise doubt about whether the grant of representation should be made.

(5) If the court sets aside the caveat under subrule (4), the caveator must not file another caveat in the court in relation to the estate without the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or directions under this rule.

(6) If the court does not set aside the caveat under subrule (4), the court may give the directions it considers appropriate for the application to be decided quickly, including a direction for the caveator to start a proceeding within a stated time.

(7) The court may give directions under subrule (6) on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(8) If the court gives a direction under subrule (6) for the caveator to start a proceeding with a stated time and the caveator fails to start a proceeding within that time, the caveat is taken to have been withdrawn.

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3070 Caveat—withdrawal if no pending proceeding for grant of representation etc

(1) This rule applies to a caveat in relation to an estate if—

(a) an application has not been made for grant of representation for the estate; or

(b) the caveator is the sole applicant for grant of representation for the estate.

(2) The caveator may withdraw the caveat by filing a notice of withdrawal in the court.

Note See approved form 3.27 (Notice of withdrawal of caveat) AF2017-182.

(3) The caveat is withdrawn on the filing of the notice.

3071 Caveat—leave to withdraw

(1) This rule applies to a caveat in relation to an estate if rule 3070 (Caveat—withdrawal if no pending proceeding for grant of representation etc) does not apply to the caveat.

(2) The caveator may withdraw the caveat only with the court's leave.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under a provision of these rules, it may give the leave on the conditions it considers appropriate, including a condition about costs.

(3) If the court gives leave for the caveat to be withdrawn, the caveat is taken to be withdrawn when the leave is given.

3072 Caveat—effect if filed on day of grant

A caveat does not affect a grant of representation made on the day the caveat is filed in the court, unless it is filed before the grant is sealed.

Note A caveat against a grant of representation may be filed any time before a grant of representation is made (see r 3066 (3) (Caveat—filing)).

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Division 3.1.8 Revocation of grant

3080 Revocation of grant—urgent order before start of proceeding

(1) This rule applies—

(a) in urgent circumstances; and

(b) if the person applying for an order mentioned in subrule (2) intends to start a proceeding for revocation of a grant of representation.

(2) Before the proceeding starts, the court may order the personal representative to bring the original grant, and all sealed copies of the grant, into the registry.

(3) An application for an order mentioned in subrule (2) must be made by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

(4) An application for an order mentioned in subrule (2) should be served, but if the court is satisfied there is adequate reason for doing so, it may make the order without the application being served on anyone.

(5) The person must give an undertaking to the court that the person will file an originating application for revocation of the grant of representation not later than—

(a) the end of the time ordered by the court; or

(b) if the court does not make an order mentioned in paragraph (a)—2 days after the day the order mentioned in subrule (2) is made.

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3081 Revocation of grant—application

(1) This rule applies if, after probate of a will or administration of an estate has been granted—

(a) a person interested in the estate wants the grant revoked; or

(b) the personal representative wants to retire from the administration.

(2) The person must apply in the proceeding in which the grant of representation was made for an order to revoke the grant.

Note Pt 6.2 (Applications in proceedings) applies to an application for revocation of a grant.

(3) An application must be supported by an affidavit setting out the facts relied on and the grounds on which the order is sought.

3082 Revocation of grant—orders

On the hearing of an application for revocation of a grant of representation, the court may make any of the following orders:

(a) an order revoking the grant;

(b) an order revoking the grant and making a limited grant of representation;

(c) an order under rule 3091 (2) (Application—div 3.1.9).

3083 Revocation of grant—return of original grant

If the court revokes a grant of representation or replaces it with a limited grant of representation, the personal representative must bring the original grant, and all sealed copies of the grant, into the registry as soon as possible, but not later than 7 days after the day the order is made.

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Division 3.1.9 Other probate proceedings

3090 Definitions—div 3.1.9

In this division:

division 3.1.9 proceeding means a proceeding to which this division applies.

Note Rule 3091 deals with the proceedings to which this division applies.

script means any of the following:

(a) a will;

(b) a draft of a will;

(c) documentary instructions for a will made by or at the request of a testator;

(d) a solicitor's attendance notes containing a client's instructions written down from the client's oral instructions;

(e) for a will alleged to have been lost or destroyed—another document that is or may be evidence of the contents, or a copy, of the will.

3091 Application—div 3.1.9

(1) This division applies to the following proceedings:

(a) a proceeding in which the court is asked to pronounce for or against the validity of a will;

(b) a proceeding brought in opposition to an application for a grant of representation;

(c) a proceeding under the *Wills Act 1968*, section 11A (Validity of will etc not executed with required formalities);

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(d) a proceeding in opposition to an application under the Administration and Probate Act, section 80 (Reseal of grant made in reciprocating jurisdiction);

(e) a proceeding for the removal of an executor;

(f) a proceeding for the revocation of a grant of representation;

(g) any other proceeding in relation to which the court makes an order under subrule (2).

(2) On application by an interested person or on its own initiative, the court may, at any stage of a proceeding started in the court in relation to an estate—

(a) order that a proceeding continue as if it were a proceeding to which this division applied; and

(b) give the directions it considers appropriate for the conduct of the proceeding; and

(c) make any orders it considers appropriate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order or directions under this rule.

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

3092 Division 3.1.9 proceeding—starting

(1) If a person wants to start a division 3.1.9 proceeding in relation to an estate and a proceeding is not before the court in relation to the estate, the person must bring the proceeding by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

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(2) If a person wants to start a division 3.1.9 proceeding in relation to an estate and a proceeding is before the court in relation to the estate, the person must bring the proceeding by application in that proceeding.

Note Pt 6.2 (Applications in proceedings) applies to the application.

3093 Division 3.1.9 proceeding—application for revocation

(1) This rule applies to a division 3.1.9 proceeding—

(a) that is started by originating application; and

(b) in which the relief sought is, or includes, the revocation of a grant of representation.

(2) The originating application must name as a defendant each person to whom the grant was made.

3094 Division 3.1.9 proceeding—affidavits

(1) This rule applies to a division 3.1.9 proceeding in relation to an estate that is started by a person by originating application or an application in the proceeding.

(2) The application must be supported by an affidavit stating the nature of the person's interest in the estate and, for an affidavit supporting an originating application, the interest in the estate of each defendant named in the originating application.

(3) The court may give directions about the filing and contents of any other affidavits in the proceeding, including a direction for affidavits of scripts to be filed.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for directions.

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

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3095 Division 3.1.9 proceeding—affidavits of scripts

(1) This rule applies if, in a division 3.1.9 proceeding, the court gives a direction under rule 3094 for affidavits of scripts to be filed.

(2) The plaintiff, and any party who files a notice of intention to respond, must each file in the court an affidavit—

(a) either—

(i) describing any script of the deceased person of which the person knows; or

(ii) if the party does not know of any script of the deceased person—stating the party does not know of any script of the deceased person; and

(b) if the party making the affidavit does not have possession of any known script—

(i) stating the name and address of the person who has, last had, or is believed to have or last had, possession of the script and the grounds for any belief; or

(ii) if the party does not know who has possession of the script—stating that fact.

Note ***Possession*** is defined in the dictionary.

(3) The party must ensure any script in the party's possession is filed as an exhibit to the affidavit.

(4) If the party does not possess the original script, the party must file a copy of the original script in the party's possession as an annexure to the affidavit.

(5) The affidavit of a party who files a notice of intention to respond must be filed not later than 14 days after the day the person files the notice of intention to respond.

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3096 Division 3.1.9 proceeding—directions for notice to people with beneficial interests

(1) This rule applies to a division 3.1.9 proceeding in relation to an estate that is started by originating application.

(2) The court may give directions about whether the plaintiff is to serve notice on anyone else who has a beneficial interest in the estate.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for directions.

Note 2 The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

3097 Division 3.1.9 proceeding—notice of intention to intervene

(1) Anyone not named in the originating application in a division 3.1.9 proceeding in relation to an estate may give notice of intention to intervene in the proceeding by filing in the court an affidavit showing that the person has an interest in the estate.

(2) The affidavit must include an address for service for the person.

Note ***Address for service*** is defined in the dictionary.

(3) The person must serve a stamped copy of the affidavit on everyone named in the proceeding.

3098 Division 3.1.9 proceeding—filing of grant of representation

(1) This rule applies if, in a division 3.1.9 proceeding, the relief sought is, or includes, the revocation of a grant of representation of an estate.

(2) The court may, at any time, order the personal representative to bring the original grant, and all sealed copies of the grant, into the registry.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Note 2 The grant and sealed copies must be brought into the registry as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)) unless the court gives a direction about when they must be brought into the registry.

Division 3.1.10 Administration and probate—other provisions

3110 Administration and probate—registrar may make inquiries

(1) For this part, the registrar may make any inquiry about the identity of a deceased person, an applicant for grant of representation for an estate, or anything else the registrar considers requires proof or explanation.

(2) The registrar may require an answer to an inquiry to be given by affidavit.

3111 Administration and probate—subpoenas

(1) In a proceeding under this part, the court may issue a subpoena under part 6.9 (Subpoenas) requiring a person (the ***subpoenaed person***) to do either or both of the following:

(a) to bring into the registry or otherwise as directed by the court a will or other document;

(b) to attend the court for examination in relation to anything relevant to the proceeding.

(2) The court must not issue a subpoena mentioned in subrule (1) (a) unless an affidavit stating that the will or other document is believed to be in the possession of the subpoenaed person, and the grounds for that belief, has been filed in the court.

Note ***Possession*** is defined in the dictionary.

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(3) If the subpoenaed person denies that the will or other document is in the person's possession, the subpoenaed person must file in the court an affidavit to that effect.

3112 Administration and probate—evidence about domicile

(1) This rule applies if—

(a) a person applies for grant of representation for the estate of a deceased person; and

(b) it appears that the deceased person may have been domiciled outside the ACT.

(2) The court may require evidence of the following:

(a) the domicile of the deceased person;

(b) the requirements of the law of the domicile in relation to the validity of any will or testamentary document made by the deceased person;

(c) the law of the domicile in relation to a person entitled in distribution of the estate

3113 Administration and probate—proof in solemn form

(1) This rule applies if the court has made a grant in common form of probate or letters of administration with the will annexed.

(2) Anyone who claims to have sufficient interest in the administration of the estate may apply to the court for an order for the personal representative to bring the grant of representation into the registry.

(3) The court must not make an order under subrule (2) unless satisfied that the applicant has an interest in the estate or a reasonable prospect of establishing an interest.

(4) If the court makes an order under subrule (2), the court may also give the directions it considers appropriate, including directions about the people to be made parties to the proceeding and about service.

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(5) If the court makes an order under subrule (2), the personal representative must bring the original grant, and all sealed copies of the grant, into the registry.

Note The grant and sealed copies must be brought into the registry as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)) unless the court gives a direction about when they must be brought into the registry.

(6) As soon as practicable after the court makes an order under subrule (2), the personal representative must start a proceeding for grant of representation in solemn form.

3114 Failure of executor to prove will—Administration and Probate Act, s 25

(1) This rule applies if the person named as the executor in a will—

(a) does not prove the will, or renounce probate, within 6 months after the later of the following:

(i) the date of the testator's death;

(ii) the executor turning 18 years old; or

(b) is unknown or cannot be found.

(2) A person interested in the estate, or a creditor of the estate, may apply to the court for orders under this rule.

(3) The application must be made by originating application, unless the application is made in a proceeding that has already started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.

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(4) The application must be supported by an affidavit filed with the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the person named as executor in the will.

(6) On application under this rule, the court may make the order in relation to administration of the estate, and any other orders, the court considers just.

3115 Failure by executor, administrator or trustee to comply with beneficiary's request etc

(1) This rule applies if an executor, administrator or trustee fails to comply with a written request from a beneficiary or another executor, administrator or trustee—

(a) to apply for and take all necessary steps to register the transmission of any interest in property; or

(b) if the executor, administrator or trustee has or is entitled to a legal interest in property—to convey or transfer the interest to the person entitled to it; or

(c) to pay or hand over any legacy or residuary bequest to the person entitled to it; or

(d) to do anything else the executor, administrator or trustee is required or allowed by law to do in relation to the estate.

(2) The beneficiary, or other executor, administrator or trustee, may apply to the court for orders under this rule.

(3) The application must be made by originating application, unless the application is made in a proceeding that has already started.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application made in a proceeding that has already started.

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(4) The application must be supported by an affidavit filed with the application.

(5) The applicant must serve a sealed or stamped copy of the application and supporting affidavit on the executor, administrator or trustee who failed to comply with the request.

(6) On application under this rule, the court may make the orders the court considers just.

3116 Grant of administration—grant to child

(1) This rule applies if—

(a) a person is under 18 years; and

(b) either—

(i) is the sole executor of a will; or

(ii) would be entitled to a grant of administration on intestacy.

(2) The court may grant administration with the will attached, or administration on intestacy, to the person's guardian, the public trustee and guardian or anyone else it considers appropriate until the person becomes an adult.

Note The court may make an order under r (2) on any conditions it considers appropriate (see r 6901 (Orders may be made on conditions)).

(3) When the person is an adult, the court may, on the person's application, grant administration with the will attached, or administration on intestacy, to the person.

Note Pt 6.2 (Applications in proceedings) applies to an application under r (3).

3117 Order about administration of real estate—Administration and Probate Act, s 51

(1) This rule applies if an application has been made for an order under the Administration and Probate Act, section 51 (Supreme Court may

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make special order) in relation to the administration of a deceased person's real estate.

(2) Stamped copies of the application and any supporting affidavits must be served personally on each party with a beneficial interest in the real estate.

3118 Assessment of costs—Administration and Probate Act, s 71

Part 2.17 (Costs) applies, with all necessary changes, to the assessment of costs for the Administration and Probate Act, section 71 (Limits of professional charges for obtaining probate etc).

3119 Administration and probate book

(1) The registrar must keep an administration and probate book.

(2) The administration and probate book—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

(3) The registrar must record in the administration and probate book—

(a) all grants of probate and administration; and

(b) all elections and orders to collect; and

(c) the passing of accounts of, and allowance of commission to, all executors and administrators.

(4) The administration and probate book must set out—

(a) the dates of the grants, elections and orders; and

(b) the names of testators and intestates; and

(c) the place and time of their deaths; and

(d) the names and descriptions of executors and administrators; and

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(e) any other information that the court directs.

(5) The registrar may record any other information in the administration and probate book.

3120 Proved wills to be kept by court

The court must keep—

(a) the original of any will filed in the court; and

(b) if the public trustee and guardian files a certified copy of an original will kept in electronic form—the certified copy.

Note 1 Rule 2901 (Copies of documents from registrar) deals with obtaining copies of documents (including wills) filed in a proceeding.

Note 2 Rule 2903 (Inspection of registry files) deals with the inspection of registry files.

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Part 3.2 Adoption

Division 3.2.1 Adoption—general

3150 Definitions—pt 3.2

In this part:

Adoption Act means the *Adoption Act 1993*.

adoption proceeding means a proceeding on an application for an adoption order.

amendment order means an order of the court under the Adoption Act, section 41 (Amendment etc of adoption condition) amending or setting aside a condition of an adoption order.

CYP director-general means the director-general responsible for the *Children and Young People Act 2008*.

discharging order means—

(a) an order of the court under the Adoption Act, section 39L (1) (Discharge of adoption order) discharging an adoption order; or

(b) an order of the court under the Adoption Act, section 52 (1) (Discharge) discharging an interim order.

dispensing order means an order of the court under the Adoption Act, section 35 (1) (Dispensing with consent) dispensing with the requirement for consent of a person to the adoption of a child.

order for access to identifying information means an order of the court under the Adoption Act, section 75 (3) (Application to court in absence of consent) or section 76 (3) (Other person's right to information).

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3151 Terms used in Adoption Act

A term used in the Adoption Act has the same meaning in this part.

Note For example, the following terms are defined in the Adoption Act, dictionary:

- Aboriginal or Torres Strait Islander child or young person
- adoption order
- associated person (see s 58)
- birth parent (see s 58)
- birth relative (see s 58)
- child
- Convention country
- identifying information (see s 58)
- instrument of consent
- interim order
- principal officer
- private adoption agency
- register of suitable people
- young person.

3152 Application—pt 3.2

This part applies to a proceeding in the Supreme Court under the Adoption Act.

Division 3.2.2 Adoption orders

3155 References to *applicants*—div 3.2.2

For this division, if an application for an adoption order is made on behalf of the proposed adoptive parent or parents by the CYP director-general or the principal officer of a private adoption agency, the application is taken to have been made by the proposed adoptive parent or parents jointly.

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3156 Adoption order—application

(1) An application for an adoption order may be made—

(a) by the proposed adoptive parent or parents; or

(b) on behalf of the proposed adoptive parent or parents, by—

(i) the CYP director-general; or

(ii) the principal officer of a private adoption agency.

Note See approved form 3.28 (Application for adoption order) AF2016-44.

(2) The application must be—

(a) supported by an affidavit in accordance with rule 3157; and

(b) accompanied by the documents required under rule 3158.

3157 Adoption order—supporting affidavit for application

(1) An affidavit supporting an application for an adoption order must be made by—

(a) the applicant; or

(b) for a joint application—each applicant jointly.

(2) The affidavit must include a statement of the following:

(a) the following particulars about the applicant:

(i) full name;

(ii) usual place of residence;

(iii) occupation;

(iv) domicile;

(v) date and place of birth;

(vi) state of health;

(vii) financial circumstances;

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(b) for a joint application—

(i) the length of the applicants' relationship; and

(ii) the stability of the relationship and the applicant's commitment to the relationship;

(c) the following information about the applicant's children (if any), whether birth children or adopted children:

(i) sex and date of birth;

(ii) the state of health of any living child;

(iii) if any child has died—the date of death;

(d) the likelihood of any children being born to the applicant in the future;

(e) the relationship (if any) to the applicant of the child or young person sought to be adopted;

(f) the period (if any) that the child or young person to be adopted has been living with the applicant;

(g) if the name of the child or young person to be adopted is to be changed—the full name proposed to be given to the child or young person;

(h) the amount and nature of any payment or reward in relation to the proposed adoption that the applicant has made, given or received, or agreed to make, give or receive;

(i) whether the applicant has ever been refused an adoption order;

(j) whether an adoption order or interim order in the applicant's favour has been discharged;

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(k) if the child or young person to be adopted is habitually resident in the ACT—that fact, together with a statement about the matters mentioned in the Adoption Act, section 57 (3) (Adoption in ACT of ACT child or young person by parents from Convention country);

(l) if the child or young person to be adopted is habitually resident in a Convention country—that fact, together with a statement about the matters mentioned in the Adoption Act, section 57B (2) (Adoption in ACT of child or young person from Convention country by ACT parents);

(m) if the child or young person to be adopted is habitually resident in a prescribed overseas jurisdiction—that fact, together with a statement about the matters mentioned in the Adoption Act, section 57J (2) (Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents);

(n) if the child or young person to be adopted is an Aboriginal or Torres Strait Islander child or young person—that fact, together with a statement about the matters mentioned in the Adoption Act, section 39G (2) (Aboriginal or Torres Strait Islander child or young person);

(o) a statement about the matters mentioned in a provision in the Adoption Act, division 3.2 (Who can adopt?) relevant to the application, including that the applicant or applicants are listed on the register of suitable people;

(p) any conditions under the Adoption Act, section 40 (Adoption order subject to certain conditions) sought by anyone in relation to the adoption.

(3) If the affidavit is made by 2 people jointly, a reference in subrule (2) to the applicant is a reference to each of them.

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3158 Adoption order—documents accompanying application

(1) The following documents must accompany an application for an adoption order:

(a) any instrument of consent to the adoption, together with an affidavit verifying the making of the instrument;

(b) any dispensing order in relation to the application;

(c) the child's or young person's birth certificate, together with—

(i) any document identifying the child or young person as the person to whom the certificate relates; or

(ii) an affidavit or written statement by the CYP director-general that the CYP director-general has made reasonable inquiries and believes that the child or young person is the person to whom the certificate relates;

(d) if the child or young person to be adopted has been, or is to be, brought from a place outside Australia for the purpose of the adoption—any other documents necessary to support the application;

(e) if the child or young person to be adopted is an Aboriginal or Torres Strait Islander child or young person—any other documents necessary to support the application;

(f) if any conditions under the Adoption Act, section 40 (Adoption order subject to certain conditions) are sought by anyone in relation to the adoption—a document signed by the birth parents and adoptive parents stating their agreement that the adoption order should be subject to the conditions.

(2) Any other document relevant to a matter stated in the affidavit supporting the application may be filed with the application.

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(3) If it is impracticable to obtain a birth certificate of the child or young person to be adopted, the applicant or applicants must state why—

(a) in the affidavit supporting the application; or

(b) if the applicant is the CYP director-general or the principal officer of a private adoption agency—in the report under the Adoption Act, section 39D (1) (Report on proposed adoption).

(4) If a document filed under this rule is not in English, the applicant or applicants must file with the document a written English translation of the document certified, in writing, by a notary public or proved by affidavit.

(5) In this rule:

birth certificate, of a child or young person, means a document that is—

(a) the official certificate of birth of the child or young person; or

(b) any other written record of the birth of the child or young person.

document includes—

(a) a copy of an original document verified as a true copy by a person having custody of the original; and

(b) a copy of an entry in an official register verified as a true copy by a person having custody of the register; and

(c) a foreign public document that has placed on it, or annexed to it, a certificate issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, a copy of the English text of which is set out in the *Foreign Evidence Act 1994* (Cwlth), schedule.

Note The *Foreign Evidence Act 1994* (Cwlth), pt 5 (Authenticating foreign public documents) sets out the formalities required for authenticating a foreign public document.

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foreign public document—see the *Foreign Evidence Act 1994* (Cwlth), section 3 (1).

3159 Adoption order—service of application on CYP director-general

If the applicant for an adoption order is not the CYP director-general or the principal officer of a private adoption agency, the applicant must serve a sealed copy of the application and stamped copies of the following documents on the CYP director-general not later than 28 days before the return date for the application:

(a) the affidavit under rule 3157 supporting the application;

(b) each document accompanying the application under rule 3158.

3160 Adoption order—notice of intention to oppose

(1) A person served under the Adoption Act, section 39B (Notice of application for adoption order) with notice of an application for an adoption order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice is served on the person.

Note See

- approved form 3.29 (Notice of application for adoption order) AF2011-56
- approved form 3.30 (Notice of opposition to application for adoption order) AF2011-57.

(2) The CYP director-general may oppose an application for an adoption order by filing in the court a notice of opposition not later than 10 days after the day the application is served on the CYP director-general.

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(3) A person who files a notice of opposition to an application for an adoption order must serve a stamped copy of the notice on—

(a) if the notice is filed by the CYP director-general—each person required to be served with notice of the application for the adoption order under the Adoption Act, section 39B; or

(b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the CYP director-general.

Division 3.2.3 Orders for dispensing with consent to adoption

3170 Dispensing order—application

(1) An application for a dispensing order must be made in the adoption proceeding in relation to which the dispensing order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.31 (Application for dispensing with consent to adoption) AF2011-58.

(2) The application must be supported by an affidavit setting out the circumstances claimed to justify making the dispensing order, including any circumstances mentioned in the Adoption Act, section 35 (1) (a) to (d) (Dispensing with consent).

(3) The supporting affidavit must be made by—

(a) the applicant for the dispensing order; or

(b) for a joint application—each applicant jointly.

(4) The application for a dispensing order must be made at the same time as the application for an adoption order unless the Adoption Act, section 35 (3) applies.

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3171 Dispensing order—service of application

An applicant for a dispensing order must serve a sealed copy of the application, and a stamped copy of the supporting affidavit, on the following people not later than 28 days before the return date for the application:

(a) each person interested in the adoption proceeding to which the application for a dispensing order relates;

(b) if the application for a dispensing order is made by someone other than the CYP director-general—the CYP director-general;

(c) if the court considers it to be in the interests of justice—anyone nominated by the court.

3172 Dispensing order—notice of intention to oppose

(1) A person served with an application for a dispensing order under rule 3171 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.32 (Notice of opposition to application for dispensing with consent to adoption) AF2011-59.

(2) A person who files a notice of opposition to an application for a dispensing order must serve a stamped copy of the notice on—

(a) if the notice is filed by the CYP director-general—each person required to be served with the application for the dispensing order under rule 3171 (a) and (c); or

(b) if the notice is filed by someone else—the applicant or applicants for the adoption order and the CYP director-general.

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Division 3.2.4 Amendment of adoption order

3180 Amendment order—application

(1) An application for an amendment order must be made in the adoption proceeding in relation to which the amendment order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.33 (Application for amendment of adoption order) AF2011-60.

(2) The application must be—

(a) supported by an affidavit setting out the details of the amendment sought and the circumstances the applicant claims justify the amendment order; and

(b) accompanied by the report from the CYP director-general required under the Adoption Act, section 41 (2) (Amendment of adoption condition).

3181 Amendment order—service of application

An applicant for an amendment order must serve a sealed copy of the application, and a stamped copy of the supporting affidavit, on each person interested in the application not later than 28 days before the return date for the application.

3182 Amendment order—notice of intention to oppose

(1) A person served with an application for an amendment order under rule 3181 may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.34 (Notice of opposition to application for amendment of adoption order) AF2010-142.

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(2) A person who files a notice of opposition to an application for an amendment order must serve a stamped copy of the notice on the applicant for the amendment order.

Division 3.2.5 Discharge of interim orders and adoption orders

3190 Discharging order—application

(1) An application for a discharging order must be made in the adoption proceeding in relation to which the discharging order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.35 (Application for discharge of adoption order) AF2010-143.

(2) The application must be supported by an affidavit setting out the circumstances the applicant claims justify making the discharging order, including any claim that an interim order, the adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means.

3191 Discharging order—service of application

A notice of an application for a discharging order served under the Adoption Act, section 39L (5) (Discharge of adoption order) must be accompanied by a copy of the affidavit supporting the application.

Note See approved form 3.36 (Notice of application for discharge of adoption order) AF2011-61.

3192 Discharging order—notice of intention to oppose

(1) A person served under the Adoption Act, section 39L (5) with notice of an application for a discharging order may oppose the application by filing in the court a notice of opposition not later than 10 days after the day the notice of application is served on the person.

Note See approved form 3.37 (Notice of opposition to application for discharge of adoption order) AF2010-145.

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(2) A person who files a notice of opposition to an application for a discharging order must serve a stamped copy of the notice on the applicant for the discharging order.

Division 3.2.6 Access to identifying information

3200 Order for access to identifying information—application

An application for an order for access to identifying information must be made in the adoption proceeding in relation to which the order is sought.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 See approved form 3.38 (Application for access to identifying information) AF2011-62.

3201 Order for access to identifying information—service of application

An applicant for an order for access to identifying information must serve, not later than 28 days before the return date for the application, sealed copies of the application on—

(a) the CYP director-general; and

(b) anyone—

(i) whose approval would be sufficient under the Adoption Act, division 5.3 (Identifying information) to entitle the applicant to the identifying information; and

(ii) who has refused approval.

3202 Order for access to identifying information—notice of intention to oppose

(1) A person served with an application for an order for access to identifying information may oppose the application by filing in the

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court a notice of opposition not later than 10 days after the day the application is served on the person.

Note See approved form 3.39 (Notice of opposition to application for access to identifying information) AF2010-147.

(2) A person who files a notice of opposition to an application for an order for access to identifying information must serve a stamped copy of the notice on the applicant for the order.

Division 3.2.7 Adoption proceedings—general procedures

3210 Adoption proceedings—service of applications

(1) A sealed copy of an application for an order under the Adoption Act must be served personally.

(2) However, a sealed copy of an application may be served on—

(a) the CYP director-general by giving the sealed copy to a member of the staff of the CYP director-general's office; and

(b) the principal officer of a private adoption agency by giving the sealed copy to a member of the staff of the agency.

Note 1 Ch 6 has provisions applying to all proceedings (see r 6000 (Application—ch 6).

Note 2 See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

3211 Adoption proceedings—service of documents containing identifying information

(1) This rule applies if—

(a) a document is required to be served on an associated person in an adoption proceeding; and

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(b) the document would, apart from this rule, contain identifying information about a birth parent, a birth relative or the adopted child or young person.

Note ***Associated person*** and ***identifying information*** are defined in the Adoption Act, s 58.

(2) If the associated person is not entitled, under the Adoption Act, division 5.3 (Identifying information), to access to identifying information about a birth parent, a birth relative or the adopted child or young person, the copy of the document to be served on the associated person must not include that identifying information.

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Part 3.3 Commercial arbitration

Division 3.3.1 Commercial arbitration—general

3250 Meaning of *Commercial Arbitration Act*—pt 3.3

In this part:

Commercial Arbitration Act means the *Commercial Arbitration Act 2017*.

3251 Terms used in Commercial Arbitration Act

A term used in the Commercial Arbitration Act has the same meaning in this part.

Note 1 For example, the following terms are defined in the Commercial Arbitration Act, dictionary:

- arbitral tribunal
- arbitration
- arbitration agreement
- party
- the court.

Note 2 In particular, ***the court*** is defined in the Commercial Arbitration Act, dictionary as follows:

the court means, subject to section 6 (2), the Supreme Court.

Section 6 (2) provides as follows:

(2) If—

(a) an arbitration agreement provides that the Magistrates Court is to have jurisdiction under this Act; or

(b) the parties to an arbitration agreement have agreed, in writing, that the Magistrates Court is to have jurisdiction under this Act and that agreement is in force;

the functions are to be performed, in relation to that agreement, by the Magistrates Court, as the case requires.

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Note This section differs from the Model Law to the extent that it relates to functions conferred on the court with respect to domestic commercial arbitrations that are not referred to in the Model Law.

3252 Commercial arbitration—application

A proceeding under the Commercial Arbitration Act must be started by originating application.

Note 1 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to the originating applications.

Note 2 Pt 6.2 (Applications in proceedings) deals with applications in proceedings. An ***application*** in a proceeding includes an application to the court about the proceeding, whether made during the proceeding or after judgment is given in the proceeding.

3253 Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 34A

(1) An application for leave to appeal to the Supreme Court under the Commercial Arbitration Act, section 34A (1) (b) (Appeals against awards) must include, or be accompanied by, a statement of—

(a) the nature of the case; and

(b) the questions involved; and

(c) the reasons why leave should be given.

Note The Commercial Arbitration Act, s 34A provides that an appeal may be brought by a party to an arbitration agreement if the parties agree and with the court's leave (see subrules (1) and (2)).

(2) The application must be made not later than 3 months from—

(a) the date on which the party making the appeal received the award; or

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(b) if a request had been made under the Commercial Arbitration Act, section 33 (Correction and interpretation of award, and making additional award)—the date on which that request had been disposed of by the arbitral tribunal.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(3) If the court grants leave to appeal, the appeal must be filed within—

(a) 30 days after the day leave is granted; or

(b) any further time allowed by the court.

3255 Commercial arbitration—application under Commercial Arbitration Act, s 27J

(1) A proceeding under the Commercial Arbitration Act, section 27J (2) (Determination of preliminary point of law by court) must be started not later than 28 days after the day the consent, or consents, mentioned in that subsection is or are given.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) A decision by the court to hear or not to hear an application under the Commercial Arbitration Act, section 27J (2) (a) must be given by order.

3256 Commercial arbitration—application for order under Commercial Arbitration Act, s 34 (1)

(1) This rule applies in relation to an application for an order under the Commercial Arbitration Act, section 34 (1) (Application for setting aside as exclusive recourse against arbitral award).

(2) The application must be made not later than 3 months from—

(a) the date on which the party making the application had received the award; or

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(b) if a request had been made under the Commercial Arbitration Act, section 33 (Correction and interpretation of award, and making additional award)—the date on which that request had been disposed of by the arbitral tribunal.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

3257 Commercial arbitration—offers of compromise

(1) A party to an arbitration agreement may at any time, by written notice, make an offer to another party to the agreement to compromise any claim to which the agreement applies, either in whole or in part, on stated terms.

(2) Part 2.10 (Offers of compromise) applies, with necessary changes, in relation to the offer as if—

(a) the arbitration were a proceeding; and

(b) the respondent were a defendant who has made or received an offer of compromise in the proceeding; and

(c) the claimant were the plaintiff who has made or received an offer of compromise in the proceeding; and

(d) the other parties to the agreement were other parties to the proceeding.

3258 Commercial arbitration—examination of witnesses

Part 6.10 (Evidence) applies in relation to the examination of a witness in a proceeding under the Commercial Arbitration Act as if the witness were a witness for the purposes of a trial and any other necessary changes were made.

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3259 Commercial arbitration—decision to refuse to issue interim measure

The court may refuse to issue an interim measure under the Commercial Arbitration Act, section 17J (Court-ordered interim measures) if the court considers that the arbitral tribunal has power to make the order applied for.

3260 Commercial arbitration—application to enforce arbitral award

An application under the Commercial Arbitration Act, section 35 (Recognition and enforcement) to enforce an arbitral award—

(a) must be supported by an affidavit that states—

(i) the extent to which the award has not been complied with at the date the application is made; and

(ii) the usual, or last-known home or business address of the person against whom it is sought to enforce the award or, if the person is a corporation, its last-known registered office; and

(b) may be made without giving notice to anyone.

3261 Commercial arbitration—evidence of arbitral award for purposes of enforcement

(1) This rule applies in a proceeding in which an application is made to the court for enforcement of an arbitral award under the Commercial Arbitration Act, section 35 (Recognition and enforcement).

(2) The *International Arbitration Act 1974* (Cwlth), section 9 (Evidence of awards and arbitration agreements) applies in the proceeding as that section applied in a proceeding in which enforcement of a foreign award was sought under the *International Arbitration Act 1974* (Cwlth).

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3262 Commercial arbitration—endorsement and service of application for enforcement

(1) An application under the Commercial Arbitration Act, section 35 (Recognition and enforcement) to enforce an arbitral award must—

(a) be endorsed with a statement that the person on whom the application is served may, before the end of 5 days after the day the application is served, apply to have the award set aside; and

(b) be served on the person against whom it is sought to enforce the award.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) The court must not recognise an arbitral award, or make an order for its enforcement, until—

(a) the end of the period mentioned in subrule (1); and

(b) if the person against whom it is sought to enforce the award applies, within the period mentioned in subrule (1), to have the award set aside—the application is decided.

Division 3.3.2 Commercial arbitration—payment into court

3263 Commercial arbitration—payment into court

(1) A party to an arbitration agreement (the ***respondent***) may at any time pay an amount into court in satisfaction of a claim to which the agreement applies of another party to the agreement (the ***claimant***).

(2) The respondent must serve a notice of the payment on the claimant and any other party to the agreement.

(3) A claimant who has paid an amount into court in accordance with this rule may make further payments increasing the amount without the court's leave.

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(4) The respondent cannot plead a defence of tender before the arbitration was started unless the respondent has paid the amount tendered into court in accordance with this division.

3264 Payment into court—costs

(1) If a party to an arbitration agreement is liable to pay the costs of another party to the agreement, the party may, at any time after the party becomes liable to pay the costs, pay an amount into court in satisfaction of the costs.

(2) This division applies, with necessary changes, in relation to costs as if—

(a) the party entitled to the costs is a claimant; and

(b) the party liable to pay the costs is a respondent; and

(c) the party's entitlement to costs is a claim to which the arbitration agreement applies.

3265 Payment into court—bond or security

(1) The respondent may lodge a bond or security for the amount of payment with the registrar instead of paying the amount into court.

(2) The bond must be given by—

(a) a corporation approved by the registrar; or

(b) the Territory, the Commonwealth or a State; or

(c) a person who is authorised, in writing, to give the bond for a person mentioned in paragraph (a) or (b).

(3) The bond or security—

(a) remains in effect unless the arbitral tribunal otherwise certifies; and

(b) applies as if the party had paid the amount of the bond or security into court under subrule (1).

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3266 Payment into court—interest up to payment

The claimant's claim to which an arbitration agreement applies is taken to include a claim for the interest that might be included in the award if the award were made at the date of the payment into court.

3267 Payment into court—acceptance

(1) The claimant may accept an amount paid into court by a respondent in satisfaction of a claim by serving a notice of acceptance on the respondent (or, if the payment was made by 1 of 2 or more respondents, each respondent)—

(a) not later than 14 days after the day notice of the payment into court is served on the claimant; or

(b) if 2 or more payments into court have been made—not later than 14 days after the day notice of the last payment into court is served on the claimant.

(2) If the respondent paid the amount into court by bond or security, the respondent must pay into court the amount of the bond or security not later than 14 days after the day the notice of acceptance is served on the respondent.

(3) If the respondent does not comply with subrule (2), the respondent is not entitled to any advantage under this division, and the claimant may—

(a) withdraw the claimant's acceptance by notice; or

(b) ask the registrar to assign the bond or security to the claimant so the claimant can enforce it.

(4) If the amount was paid into court by 1 of 2 or more respondents, the amount may be paid out only—

(a) with the agreement of the parties to the agreement; or

(b) in accordance with a certificate of the arbitral tribunal.

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(5) Unless the arbitral tribunal otherwise awards, payment must be made to—

(a) the claimant; or

(b) if the claimant has given written authority for payment to be made to the claimant's solicitor—the claimant's solicitor.

(6) If payment out of court is made in accordance with this rule, the claim is permanently stayed.

3268 Payment into court—costs on acceptance by claimant

(1) Unless the arbitral tribunal otherwise directs, a claimant may file a bill of costs for assessment not earlier than 7 days after the day the amount is paid into court if the claimant accepts an amount paid into court in satisfaction of the claim.

(2) The costs claimed in the bill of costs may include—

(a) the costs incurred to the day of payment into court; and

(b) the costs reasonably incurred in accepting the payment; and

(c) the costs incurred in preparing the bill of costs.

3269 Payment into court—payment out of remaining amount

If an amount paid into court is not taken out in accordance with this division, the amount may be paid out only—

(a) with agreement of all parties to the agreement; or

(b) in accordance with a certificate of the arbitral tribunal.

3269A Payment into court—nondisclosure

The arbitral tribunal must not be told about any payment into court before the arbitral tribunal makes an award.

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Part 3.4 Corporations Act and ASIC Act

3270 Rules for proceedings under Corporations Act or ASIC Act

The rules in schedule 6 apply to a proceeding in the Supreme Court under the Corporations Act or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

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Part 3.5 Cross-vesting

3300 Definitions—pt 3.5

In this part:

Cross-vesting Act means the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

cross-vesting law means any law of the Commonwealth or a State or Territory (including the ACT) relating to the cross-vesting of jurisdiction, and includes the Cross-vesting Act.

special federal matter—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).

3301 Terms used in Cross-vesting Act

A term used in the Cross-vesting Act has the same meaning in this part.

Note For example, the following terms are defined in the Cross-vesting Act, dictionary:

- ACT matter
- judgment
- party
- proceeding
- State
- Territory.

3302 Application—pt 3.5

(1) This part applies only to the Supreme Court.

(2) This part applies to a proceeding to which a cross-vesting law applies.

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3303 Cross-vesting—application for transfer or removal of proceedings

(1) An application under a cross-vesting law for the transfer of a proceeding pending in the court must be made by application in the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(2) An application under the Cross-vesting Act, section 8 for an order removing a proceeding from an ACT court (other than the Supreme Court) or a tribunal to the Supreme Court must be made by originating application.

3304 Cross-vesting—application by Attorney-General

(1) This rule applies if the Attorney-General of the Commonwealth, a State or Territory applies to the court under a cross-vesting law for the transfer of a proceeding pending in the court.

(2) The application may be made without the Attorney-General becoming a party to the proceeding.

3305 Cross-vesting—removal of proceedings

(1) This rule applies if the court makes an order under the Cross-vesting Act, section 8 removing a proceeding from another ACT court or a tribunal to the court.

(2) Immediately on the removal of the proceeding to the court, the court may give a direction, make a decision or direct the parties to take a step in the proceeding that the court considers appropriate.

(3) The court's powers under subrule (2)—

(a) are in addition to the court's powers under rule 3308 (Cross-vesting—directions); and

(b) include power to give directions that could have been given by the court or tribunal in which the proceeding was pending.

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3306 Cross-vesting—relying on jurisdiction under cross-vesting laws

(1) This rule applies if a party to a proceeding relies on a provision of a cross-vesting law.

(2) The party must include in the process, pleading or affidavit by which the cross-vesting law is relied on a statement—

(a) identifying the provision of the cross-vesting law relied on; and

(b) identifying each claim or ground of defence for which the provision of the cross-vesting law is relied on; and

(c) the grounds on which the provision is relied on.

(3) Failure to comply with subrule (2) does not invalidate the process, pleading or affidavit.

(4) If a party who has not complied with subrule (2) wishes to rely on a provision of a cross-vesting law, the court may, on application by the party, give directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(5) If a matter to be decided in the proceeding is a special federal matter, the statement mentioned in subrule (2) must also—

(a) identify the matter as a special federal matter; and

(b) state the grounds on which it is a special federal matter.

3307 Cross-vesting—service

(1) Despite part 6.8 (Service), an originating process by which a cross-vesting law is relied on may be served outside the ACT.

(2) If a defendant served outside the ACT under subrule (1) does not file a notice of intention to respond or defence, the plaintiff must not take a further step in the proceeding unless the court gives leave to proceed.

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(3) The court must not give leave to proceed unless satisfied that—

(a) jurisdiction under a cross-vesting law is being relied on; and

(b) the court is a convenient court in which to decide the matter.

(4) An application for leave to proceed must be made by application in the proceeding or it may be included in the application for directions under rule 3308.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave to proceed.

(5) An order giving leave to proceed does not prevent the court from later transferring the proceeding to another court.

3308 Cross-vesting—directions

(1) The first party in a proceeding to rely on a cross-vesting law must apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(2) If a plaintiff is required to apply for directions, the plaintiff must make and serve the application not later than 7 days after the day the first notice of intention to respond or defence is served on the plaintiff.

(3) If a defendant is required to apply for directions, the defendant must make and serve the application not later than 7 days after the day the process by which the cross-vesting law is relied on is served.

(4) If a proceeding is transferred to the court from another court, the plaintiff must, not later than 21 days after the day the order for the transfer is made, apply to the court for directions.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(5) If the plaintiff does not comply with subrule (4)—

(a) another party may apply for directions; or

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(b) the court may call the parties before it on its own initiative.

(6) On hearing an application for directions, the court must give the directions or make the decisions about the conduct of the proceeding that it considers appropriate.

(7) At the trial or hearing of the proceeding, the court may amend or set aside a direction made on application for directions.

3309 Cross-vesting—procedure following transfer of proceeding from court

(1) This rule applies if the court makes an order transferring a proceeding to another court under a cross-vesting law.

(2) The registrar must send to the other court all documents filed in the court and a sealed copy of orders made in the proceeding.

3310 Cross-vesting—procedure following transfer of proceeding to court

(1) This rule applies if a proceeding is transferred to the court from another court under a cross-vesting law.

(2) The registrar must—

(a) give a distinguishing number or other unique identifier to the proceeding; and

(b) record in the cause book—

(i) the distinguishing number or other unique identifier given to the proceeding; and

(ii) the date when the proceeding was sent to the court; and

(iii) any other information that the court directs.

(3) The registrar must—

(a) give each party to the proceeding notice of the distinguishing number or other unique identifier given to the proceeding; and

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(b) direct each party to file in the court, not later than 7 days after the day the proceeding is transferred to the court, a notice that states the party's address for service.

Note ***Address for service*** is defined in the dictionary.

3311 Cross-vesting—application of another jurisdiction's written law

(1) This rule applies if a party to a proceeding wants to have a written law of another State or Territory applied under the Cross-vesting Act, section 11 (1) (b) (Conduct of proceedings) in the proceeding in deciding a right of action arising under the written law of the other State or Territory.

(2) The party's pleadings must include a statement identifying the right of action and the written law under which it arises.

3312 Cross-vesting—application of another jurisdiction's rules of evidence and procedure

(1) This rule applies if a party to a proceeding wants to have rules of evidence and procedure, other than those of the court, applied under the Cross-vesting Act, section 11 (1) (c) in dealing with a matter to be decided in the proceeding.

(2) The party's pleadings must include a statement identifying the rules that the party wants applied.

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Part 3.6 Electoral matters

Division 3.6.1 Electoral matters—general

3350 Definitions—pt 3.6

In this part:

election application means an application under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) disputing the validity of an election made in accordance with the Electoral Act, section 258 (Form of application).

Electoral Act means the *Electoral Act 1992*.

3351 Terms used in Electoral Act

A term used in the Electoral Act has the same meaning in this part.

Note For example, the following terms are defined in the Electoral Act, s 250 (Definitions—pt 16):

- application
- Court of Disputed Elections
- election
- proceeding.

Also, the following terms are defined in the Electoral Act, dictionary:

- Assembly
- ballot paper
- commissioner
- newspaper.

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3352 Application—pt 3.6

This part applies only to the Supreme Court when exercising its jurisdiction as the Court of Disputed Elections.

Note The Electoral Act, s 252 (1) (Court of Disputed Elections) provides that the Supreme Court has jurisdiction to hear and decide—

(a) applications disputing the validity of elections; and

(b) questions referred to the Supreme Court by resolution of the Assembly relating to the eligibility of people who have been declared elected to be members of the Assembly or vacancies in the membership of the Assembly.

That Act, s 252 (2) provides that, when exercising jurisdiction under s 252 (1), the Supreme Court is to be known as the Court of Disputed Elections.

3353 Election application etc originating application

(1) To remove any doubt, these rules apply to an election application as if the application were an originating application.

(2) These rules apply in relation to a reference to the court under the Electoral Act, division 16.4 (Eligibility and vacancies) as if a statement under the Electoral Act, section 276 (Speaker to state case) setting out a question referred by the Assembly were an originating application.

(3) These rules apply to an election application or a statement mentioned in subrule (2)—

(a) subject to the Electoral Act and this part; and

(b) with any necessary changes.

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Division 3.6.2 Disputed elections

3355 Disputed election—deposit as security for costs

For the Electoral Act, section 260 (1) (Deposit as security for costs), the amount a plaintiff must deposit with the registrar as security for costs is $2 000.

3356 Disputed election—public notice of election application

(1) This rule applies if a person files an election application in the court.

(2) After filing the election application, the plaintiff must, as soon as possible but not later than 7 days before the return date for the election application, publish a notice of the filing of the application in a newspaper.

(3) The notice must state—

(a) the plaintiff's name, the date of filing and the declaration sought; and

(b) as briefly as practicable, the facts relied on to invalidate the election.

3357 Disputed election—parties to proceeding

The parties to a proceeding under the Electoral Act, division 16.3 (Disputed elections) are—

(a) the plaintiff; and

(b) each other person who—

(i) is entitled under the Electoral Act, section 262 (Parties to application under div 16.3) or section 263 (Withdrawal and abatement of application) to appear in the proceeding; and

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(ii) files a notice of intention to respond.

Note For provisions about when a notice of intention to respond must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

3358 Disputed election—public notice of intention to make application for leave to withdraw

For the Electoral Act, section 263 (3) (Withdrawal and abatement of application), the notices required by that subsection must be published and given not later than 7 days before the leave application is filed in the court.

3359 Disputed election—particulars of contested ballot papers

(1) This rule applies if an election application—

(a) seeks a declaration that—

(i) a person who has been declared elected was not duly elected; or

(ii) a person who has not been declared elected was duly elected; and

(b) states a claim or objection to ballot papers or a class of ballot papers.

(2) Not later than 7 days before the return date for the election application, each party to the proceeding must file, and serve on each other party—

(a) a list of the ballot papers or classes of ballot papers intended to be claimed or objected to; and

(b) if the ballot papers are being objected to—a statement of the grounds for the objection.

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(3) If a party does not include a ground for an objection in the party's statement mentioned in subrule (2) (b), the party may only rely on the ground with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(4) Without limiting rule 6902 (Leave may be given on conditions), leave may be given on any of the following conditions:

(a) conditions about amendment of the statement and service of the amended statement;

(b) conditions about adjournment and costs.

3360 Disputed election—countercharges

(1) This rule applies if a defendant to an election application to which rule 3359 applies intends to oppose the election application on a ground not mentioned in the party's statement (if any) under that rule.

(2) Not later than 7 days after the day the defendant files a notice of intention to respond, the defendant must—

(a) file in the court a statement of the grounds on which the defendant intends to rely in opposing the election application; and

(b) serve a stamped copy of the statement on the plaintiff.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(3) The statement must set out the facts the defendant relies on with sufficient particularity to identify the ground on which the defendant opposes the election application.

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3361 Disputed election—time of trial etc

(1) The trial of an election application must be held at a time set by the court.

(2) If the court makes an order setting the time for the trial, the plaintiff must, not later than 14 days before the trial date—

(a) serve a sealed copy of the order on each other party; and

(b) publish notice of the trial in a newspaper.

(3) An order setting the time of the trial may be amended by the court from time to time.

3362 Disputed election—substitution of plaintiff

(1) This rule applies if—

(a) the court is deciding whether to give leave under the Electoral Act, section 263 (Withdrawal and abatement of application) for the withdrawal of an election application; or

(b) the sole plaintiff, or the last survivor of several plaintiffs, for an election application dies before the trial of the application.

(2) The court may order that someone else be substituted as the plaintiff if the other person—

(a) is entitled to dispute the validity of the election on similar grounds to the plaintiff; and

(b) agrees to be substituted as the plaintiff.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order.

Note 2 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

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3363 Disputed election—withdrawal of defendant

For the Electoral Act, section 263 (9) (a) (Withdrawal and abatement of application), the defendant's notice of intention not to oppose an election application must be filed in the court.

3364 Disputed election—substitution of defendant

For the Electoral Act, section 263 (9) (e) (Withdrawal and abatement of application), the period within which a notice of intention to respond must be filed by a person wanting to become a defendant is as soon as possible, but not later than 7 days after the day when notice that a person has ceased to be a defendant is published in a newspaper in accordance with the Electoral Act, section 263 (9) (d) (i).

Division 3.6.3 Questions referred by Legislative Assembly

3400 Question referred—parties to proceeding

A person is a party to a proceeding under the Electoral Act, division 16.4 (Eligibility and vacancies) if the person—

(a) is entitled under the Electoral Act, section 277 (Parties to a referral) to appear in the proceeding; and

(b) the person files a notice of intention to respond.

Note For provisions about when a notice of intention to respond or defence must be filed etc, see r 102 (Notice of intention to respond or defence—filing and service).

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Division 3.6.4 Electoral matters—general procedure

3405 Electoral matters—better particulars

The court may order a party to a proceeding under the Electoral Act, part 16 (Disputed elections, eligibility and vacancies) to give another party particulars, or better particulars, of a matter alleged by the party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order for particulars, or better particulars.

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Part 3.7 Foreign and interstate confiscation orders—registration

Division 3.7.1 Foreign confiscation orders—registration

3450 Definitions—div 3.7.1

In this division:

foreign confiscation order means—

(a) any of the following orders within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 3 (1):

(i) a foreign forfeiture order;

(ii) a foreign pecuniary penalty order;

(iii) a foreign restraining order; or

(b) a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth), section 4.

register means the register of foreign confiscation orders kept under rule 3452.

3451 Application—div 3.7.1

This division applies only in relation to the Supreme Court.

3452 Foreign confiscation orders—register

(1) The registrar must keep a register of foreign confiscation orders.

(2) The register—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

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(3) The registrar must record in the register, for each foreign confiscation order registered—

(a) the date when the order was filed in the court ;and

(b) the date when the order was made; and

(c) the name of the court or other entity that made the order; and

(d) the name of the person subject to the order; and

(e) the name of the person who applied for registration of the order, or for whose benefit the order was registered; and

(f) if the order is amended—the date the order is amended; and

(g) if the order is cancelled—the date the order is cancelled.

(4) Subrule (3) does not limit the details of the order that the registrar may include in the register.

3453 Foreign confiscation orders—registration

A foreign confiscation order, or an amendment of a foreign confiscation order, is registered when details of the order or amendment are included in the register.

Note The *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), s 34A (5) (Registration of foreign confiscation orders), and the *International War Crimes Tribunals Act 1995* (Cwlth), s 45 (2) (Registration of order) provide for foreign confiscation orders (and amendments) to be registered in the Supreme Court of a State or Territory where the property (or part of the property) that is the subject of the order is believed to be located. Registration is required by those provisions to be in accordance with the rules of court.

3454 Foreign confiscation orders—proceedings for registration

(1) An application for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, must—

(a) be made by originating application; and

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(b) if the application relates to a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth)—be accompanied by an affidavit by the plaintiff setting out particulars necessary to enable the court to comply with that Act, section 45 (1).

Note Section 45 (1) requires the court, on registration of the order, to direct the Commonwealth director of public prosecutions to give notice of registration 'to specified persons…the court has reason to believe may have an interest in the property [that is the subject of the order]'.

(2) The person against whom the foreign confiscation order was made must be named as the defendant to the application.

(3) The application may be made without notice to anyone unless the court otherwise orders.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the foreign confiscation order or amendment in closed court and in the absence of the parties.

(6) If the court makes an order for registration of a foreign confiscation order, or an amendment of a foreign confiscation order, the plaintiff must serve on the defendant—

(a) a sealed copy of the order for registration; and

(b) a certified copy of the registered foreign confiscation order or registered amendment of a foreign confiscation order.

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3455 Foreign confiscation orders—when registration cancelled

The registration of a foreign confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order filed in the court and details of the cancellation are included in the register.

Division 3.7.2 Interstate confiscation orders—registration

3460 Definitions—div 3.7.2

In this division:

interstate confiscation order means any of the following within the meaning of the *Confiscation of Criminal Assets Act 2003*:

(a) an interstate restraining order;

(b) an interstate automatic forfeiture decision;

(c) an interstate civil forfeiture order;

(d) an interstate conviction forfeiture order.

register means the register of interstate confiscation orders kept under rule 3461.

3461 Interstate confiscation orders—register

(1) The registrar must keep a register of interstate confiscation orders.

(2) The register—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

(3) The registrar must record in the register, for each interstate confiscation order filed—

(a) the date when the order was filed in the court ;and

(b) the date when the order was made; and

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(c) the name of the court or other entity that made the order; and

(d) the name of the person subject to the order; and

(e) the name of the person who applied for registration of the order, or for whose benefit the order was registered; and

(f) if the order is amended—the date the order is amended; and

(g) if the order is cancelled—the date the order is cancelled.

(4) Subrule (3) does not limit the details of the order that the registrar may include in the register.

3462 Interstate confiscation orders—registration

An interstate confiscation order, or an amendment of an interstate confiscation order, is registered when details of the order or amendment are included in the register.

Note The *Confiscation of Criminal Assets Act 2003*, s 137 provides for interstate confiscation orders (and amendments) to be registered in court if the property (or part of the property) is situated in the ACT. They may be registered in the Supreme Court or the Magistrates Court (see that Act, s 238, s 240 and s 241). Registration is required to be in accordance with the procedure of the relevant court (see that Act, s 137 (5)).

3463 Interstate confiscation orders—proceedings for registration

(1) An application for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, must be made by originating application.

(2) The person against whom the interstate confiscation order was made must be named as the defendant to the application.

(3) The application may be made without notice to anyone unless the court otherwise orders.

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(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) If the application asks for the application to be dealt with under this subrule, the court may make an order for registration of the interstate confiscation order or amendment in closed court and in the absence of the parties.

(6) If the court makes an order for registration of an interstate confiscation order, or an amendment of an interstate confiscation order, the plaintiff must serve on the defendant—

(a) a sealed copy of the order for registration; and

(b) a certified copy of the registered interstate confiscation order or registered amendment of an interstate confiscation order.

3464 Interstate confiscation orders—when registration cancelled

The registration of an interstate confiscation order is cancelled when a note of its cancellation is endorsed on the copy of the order filed in the court and details of the cancellation are included in the register.

3465 Interstate confiscation orders—filing of amendments etc

For the *Confiscation of Criminal Assets Act 2003*, section 141 (1) (b), details of any amendment of an interstate confiscation order, or any direction of the entity that made an interstate confiscation order, may be given to the court only by filing in the court a copy of the amendment or direction sealed by the entity that made the order or gave the direction or otherwise authenticated to the court's satisfaction.

Note Section 141 (1) provides that unless details of these amendments or directions are given to the court in accordance with the procedures of the court, the registration of the order may be cancelled.

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Part 3.8 Foreign judgments—reciprocal enforcement

3470 Definitions—pt 3.8

In this part:

Foreign Judgments Act means the *Foreign Judgments Act 1991* (Cwlth).

judgment means a judgment to which the Foreign Judgments Act, part 2 applies.

3471 Terms used in Foreign Judgments Act

A term used in the Foreign Judgments Act has the same meaning in this part.

Note For example, the following terms are defined in the Foreign Judgments Act, s 3 (Interpretation):

- judgment
- judgment creditor
- judgment debtor
- money judgment
- non-money judgment
- non-recoverable tax
- original court
- recoverable Papua New Guinea income tax

3472 Application—pt 3.8

This part applies only in relation to the Supreme Court.

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3473 Foreign judgment—application for registration

(1) An application for registration of a judgment must be made by originating application.

Note See approved form 3.40 (Originating application for registration of judgment under Foreign Judgments Act 1991 (Cwlth)) AF2006-368.

(2) The application must be accompanied by—

(a) a copy of the judgment certified by the original court; and

(b) if the certified copy of the judgment is not English—a written English translation of the judgment certified, in writing, by a notary public or proved by affidavit; and

(c) the supporting affidavit required by rule 3474.

(3) An application for registration of a judgment may be made without notice to anyone or on notice given to the judgment debtor.

(4) A return date must not be set for the application unless the court otherwise orders on its own initiative.

Note ***Return date*** for an application is defined in the dictionary.

(5) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

3474 Foreign judgment—evidence in support of application for registration

(1) The supporting affidavit for an application for registration of a judgment must state the following particulars:

(a) the full name and last-known address of the judgment creditor and judgment debtor;

(b) the facts that show that the Foreign Judgments Act, part 2 applies to the judgment;

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(c) the regulation under the Foreign Judgments Act that extends that Act, part 2 in relation to the judgment;

(d) the nature of the causes of action to which the judgment relates;

(e) that a regulation has not been made under the Foreign Judgments Act, section 13 applying the section to the country of the original court;

(f) if the judgment is a money judgment—the amount of the judgment, on the day the application is made, in the currency of the original judgment and in Australian currency;

(g) that the judgment has not been completely satisfied or, if the judgment has been partly satisfied, the amount for which it remains unsatisfied on the day the application is made;

(h) if some only of the provisions of the judgment are subject to the application—the provisions of the judgment to which the application applies;

(i) that there is no reason why the judgment could not be enforced in the country of the original court;

(j) the costs of registration of the judgment incurred by the applicant;

(k) if the judgment creditor wants the judgment to be registered in a currency other than Australian currency—the rate of exchange prevailing on the day the affidavit is made;

(l) if it is more than 6 years after the day the judgment was entered—whether there has been a proceeding by way of appeal against the judgment and, if so, the date of the last judgment in the proceeding;

(m) if interest is payable on the judgment under the law of the country of the original court and the interest is not stated in the judgment—the rate of interest;

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(n) if interest is payable on the judgment—the amount of interest that has accrued by the day the application is made;

(o) if the judgment is a judgment of a court of Papua New Guinea—the amount (if any) payable under the judgment that is recoverable Papua New Guinea income tax or non-recoverable tax.

(2) The person making the affidavit may state the particulars mentioned in subrule (1) as the belief of the person, giving the source of the person's information and the grounds of the person's belief.

3475 Foreign judgment—security for costs of application for registration

The court may order that a judgment creditor who has applied for registration of a judgment give security for the costs of any proceeding that may be brought under the Foreign Judgments Act, section 7 to set aside registration of the judgment.

3476 Foreign judgment—order for registration

The court may order the registration of a judgment on application in accordance with this part.

Note See approved form 3.41 (Order for registration of judgment under Foreign Judgments Act 1991 (Cwlth)) AF2015-34.

3477 Foreign judgment—register

(1) The registrar must keep a register of registered judgments.

(2) The register—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

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3478 Foreign judgment—registration

(1) If the court orders that a judgment be registered, the registrar must register the judgment by entering in the register of foreign judgments the following particulars of the judgment:

(a) the full name and last-known address of the judgment creditor and judgment debtor;

(b) the name of the original court;

(c) the details of the judgment;

(d) the date of the order that the judgment be registered;

(e) if the judgment is a money judgment—the amount of the judgment, at the time of registration of the judgment, in the currency of the original judgment and in Australian currency after deducting any amount paid in satisfaction of the judgment;

(f) if the judgment is a non-money judgment—a brief description of the terms of the judgment;

(g) the amount payable under the judgment after deducting any amount paid in part satisfaction of the judgment;

(h) any interest that, under the law of the country of the original court, has become payable under the judgment up to the time of registration.

(2) The registrar must also record the following details in the register:

(a) the reasonable costs of, and incidental to, registration of the judgment including—

(i) the cost of obtaining a certified copy of the judgment from the original court; and

(ii) the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed;

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(b) any special directions contained in the order for registration.

3479 Foreign judgment—notice of registration

(1) The judgment creditor under a registered judgment must, not later than 28 days after the day the judgment is registered, serve—

(a) notice of the registration on the judgment debtor; and

Note See approved form 3.42 (Notice of registration of judgment order under Foreign Judgments Act 1991 (Cwlth)) AF2006-370.

(b) a sealed copy of the order for registration; and

(c) a stamped copy of the affidavit filed under rule 3474 (1) (c).

(2) Unless the court otherwise orders, the notice and accompanying documents must be served personally.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3480 Notice of registration—affidavit of service to be filed

An affidavit of service of the notice of registration of a judgment and accompanying documents must be filed in the court before any step is taken to enforce the judgment.

3481 Registration of judgment—application to set aside

An application to set aside the registration of a judgment must—

(a) be made within the period stated in the order for registration of the judgment; and

(b) be supported by an affidavit setting out the specific grounds on which the application is made.

Note Pt 6.2 (Applications in proceedings) applies to the application.

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3482 Foreign judgment—enforcement

(1) The form of enforcement order used in relation to the enforcement of a registered judgment must be amended, in a way approved by the registrar, by stating—

(a) that the judgment is a registered judgment; and

(b) the date of, and the amount payable under, the judgment.

(2) If a registered judgment is enforced, the registrar must, as soon as practicable after the return of the enforcement order to the court, enter details of the enforcement in the register of registered judgments.

3483 Australian judgment—certificate for foreign registration

(1) An application under the Foreign Judgments Act, section 15 (Issue of certificates of judgments obtained in Australian courts) in relation to a judgment that has been given in an Australian court may be made without notice to anyone.

(2) The application must be made—

(a) in the proceeding in which the judgment was obtained; and

(b) by filing—

(i) a draft of the certificate sought; and

(ii) a supporting affidavit.

(3) Part 6.2 (Applications in proceedings) does not apply to the application.

(4) The supporting affidavit must include all information that would enable the certificate to be issued.

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(5) For the Foreign Judgments Act, section 15 (1) (b), the certificate must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for the certificate.

Note See approved form 3.43 (Certificate of judgment under the Foreign Judgments Act 1991 (Cwlth)) AF2006-371.

(6) Unless the court otherwise orders on application or its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

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Part 3.9 Habeas corpus

3500 Definitions—pt 3.9

In this part:

custody includes confinement.

defendant means the person named as the defendant in—

(a) a habeas corpus order; or

(b) an application for a habeas corpus order.

habeas corpus order includes an order for the production of a person in custody for the purpose of examination or trial.

3501 Application—pt 3.9

This part applies only to the Supreme Court.

3502 Habeas corpus—writs of habeas corpus abolished

Writs of habeas corpus are no longer to be issued by the court.

3503 Habeas corpus—order instead of writ of habeas corpus

(1) If, before the commencement of these rules, the court had jurisdiction to grant any relief by way of a writ of habeas corpus, the court continues to have jurisdiction to grant the relief.

(2) However, the court may grant the relief only by making an order under these rules in the nature of, and to the same effect as, the relief that would have been available before the commencement of these rules.

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3504 Habeas corpus—application and service

(1) A proceeding for a habeas corpus order must be started by originating application.

Note Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a habeas corpus order.

(2) However, if an application for a habeas corpus order in relation to a proceeding is made during the proceeding, the application must be made in accordance with part 6.2 (Applications in proceedings).

(3) The application must be supported by an affidavit.

(4) The affidavit may—

(a) be made by someone else on behalf of the person in custody; and

(b) contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

Note The hearsay rule does not apply to evidence in an application in a proceeding if the party adducing the evidence also adduces evidence of its source (see Evidence Act, s 75 (Exception—interlocutory proceedings)).

(5) The application need not be served on anyone unless the court otherwise orders on its own initiative.

3505 Habeas corpus—parties

An application for a habeas corpus order may be made by the person in custody or by someone else.

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3506 Habeas corpus—procedure on application etc

(1) On the hearing of an application for a habeas corpus order, the court may—

(a) order the release or other disposition of the person in custody; or

(b) order the issue of a habeas corpus order directed to the defendant and to anyone else and give directions about the course to be taken under the habeas corpus order; or

(c) dismiss the application.

Note See approved form 3.44 (Habeas corpus order) AF2006-372.

(2) If a habeas corpus order is issued—

(a) the person to whom the order is directed must bring the person in custody before the court as directed in the order; and

(b) unless the court otherwise orders, the following must be served personally on everyone to whom the order is directed:

(i) a sealed copy of the order;

(ii) the application for the order;

(iii) the supporting affidavits;

(iv) a notice stating the things to be done by the person under the order and the consequences of failing to comply with the order.

Note 1 See r 6405 (How document is personally served). Service may be made in another way eg by substituted service (see r 6460 (Substituted service)).

Note 2 The documents must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

Note 3 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

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(3) However, if a habeas corpus order is directed to the person in charge of the place where the person is in custody, a document mentioned in subrule (2) (b) may be served—

(a) by sending a copy by prepaid post to the place where the person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

(4) The court may, pending the return of the habeas corpus order, make an order about the custody of the person in custody.

3507 Habeas corpus—return of order

On the return of a habeas corpus order, the court may do any of the following:

(a) receive further evidence in support of the application for release from custody;

(b) allow a person to whom the order is directed to show cause why the person should not be released from custody;

(c) if it considers the person's custody is unlawful—order the person's release or other disposition;

(d) set aside the order;

(e) if the evidence presented to the court suggests someone else has custody of the person in custody—order another habeas corpus order issue directed to the other person;

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(f) make an order or give directions about the disposal of the proceeding, or about the person in custody, it considers appropriate.

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Part 3.10 Judicial review

3550 Definitions—pt 3.10

In this part:

certiorari order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of certiorari.

Judicial Review Act means the *Administrative Decisions (Judicial Review) Act 1989*.

judicial review application means—

(a) an application for a statutory order of review; or

(b) an application for prerogative relief; or

(c) an application for a statutory order of review and prerogative relief; or

(d) an application mentioned in rule 3561 (Judicial review—application for statutory order of review and prerogative relief etc); or

(e) an application in relation to which an order is made under rule 3562 (Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review).

prerogative injunction means an injunction mentioned in rule 3554 (3) (c) (Judicial review—relief previously granted by prerogative writ etc).

prerogative order means an order mentioned in rule 3554 (2) (Judicial review—relief previously granted by prerogative writ etc).

prerogative relief means a prerogative order, and includes a prerogative injunction or declaration.

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prohibition order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted by way of a writ of prohibition.

quo warranto order means an order the relief under which is in the nature of, and to the same effect as, the relief that could, apart from these rules, have been granted on an information in the nature of *quo warranto*.

statutory order of review means an order on an application made—

(a) under the Judicial Review Act, section 5 (Applications for review of decisions) in relation to a decision to which that Act applies; or

(b) under the Judicial Review Act, section 6 (Applications for review of conduct related to making of decisions) in relation to conduct engaged in, or proposed to be engaged in, for the purpose of making a decision to which that Act applies; or

(c) under the Judicial Review Act, section 7 (Applications for failures to make decisions) in relation to a failure to make a decision to which that Act applies.

3551 Terms defined in Judicial Review Act

A term defined in the Judicial Review Act has the same meaning in this part.

Note For example, the Judicial Review Act defines the following terms:

- conduct engaged in (for the purpose of making a decision) (see s 3C)
- decision to which this Act applies (see dict)
- failure to make (a decision) (see s 3A)
- making (a decision) (see s 3A)
- statement of reasons (for a decision) (see dict).

3552 Application—pt 3.10

This part applies only to the Supreme Court.

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3553 Judicial review—prerogative writs etc abolished

(1) The prerogative writs of mandamus, prohibition and certiorari are no longer to be issued by the Supreme Court.

(2) Informations in the nature of *quo warranto* are abolished.

3554 Judicial review—relief previously granted by prerogative writ etc

(1) If, before the commencement of these rules, the court had jurisdiction to grant any relief by way of a writ of mandamus, prohibition or certiorari, or on an information in the nature of *quo warranto*, the court continues to have jurisdiction to grant the relief.

(2) However, the court may grant the relief only by making an order under these rules in the nature of, and to the same effect as, the relief that would have been available before the commencement of these rules.

(3) For example, if—

(a) someone acts in an office in which the person is not entitled to act; and

(b) an information in the nature of *quo warranto* would, but for rule 3553 (2) (Judicial review—prerogative writs etc abolished), lie against the person;

the court may—

(c) grant an injunction restraining the person from acting in the office; and

(d) declare the office to be vacant.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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3555 Judicial review—other jurisdiction not excluded

The existence of prerogative relief under this part does not exclude any other jurisdiction of the court to grant relief.

Note The Judicial Review Act, s 8 (1) (Effect of Act on other rights) provides that the rights given to someone under that Act, ss 5-7 to seek an order for review are additional to the person's rights to seek a review in another way.

3556 Judicial review—application etc

(1) A statutory order of review or prerogative relief must be sought by way of judicial review by originating application.

Note 1 See approved form 3.45 (Originating application—judicial review) AF2006-373.

Note 2 Div 2.2.3 (Originating applications) contains provisions about the content of originating applications, the filing and service of originating applications, etc. The division applies, subject to this part (see r 22 (Application—ch 2)), to an application for a statutory order of review or prerogative relief.

(2) The application must state—

(a) if the grounds of the application include an allegation of fraud or bad faith—particulars of the fraud or bad faith on which the plaintiff relies; and

(b) if the application is an application for prerogative relief and the grounds of the application include an allegation of a mistake or omission in an order or proceeding—particulars of the mistake or omission on which the plaintiff relies; and

(c) if the application is for a quo warranto order in relation to a person's office—particulars of the objection to the person's entitlement to act in the office.

Note Rule 60 (3) (Originating application—content etc) provides that the originating application must state specifically the orders or other relief sought in the proceeding.

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(3) A person may apply for prerogative relief if the person's interests are, or would be, adversely affected in or by the matter to which the application relates.

(4) A person must be included as a defendant to the application if—

(a) the application relates to a decision made by an entity authorised to make the decision, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application or is interested in maintaining the decision; or

(b) for a statutory order of review—the application relates to conduct engaged in, or proposed to be engaged in, by an entity for the purpose of making a decision to which the Judicial Review Act applies, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application or is interested in maintaining the decision; or

(c) for a statutory order of review—the application relates to a failure by an entity to make a decision to which the Judicial Review Act applies, and the person—

(i) appeared, or was given leave to appear, before the entity; and

(ii) would be directly affected by the relief sought in the application.

Note For an application for a statutory order of review, the Judicial Review Act, s 12 (Application to be made a party to a proceeding) provides that a person interested in a decision, conduct or failure in relation to which an application has been made to the Supreme Court under that Act may apply to the Supreme Court to be made a party to the application.

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(5) If the application relates to an order of a judicial officer of a court or member of a tribunal, the application must name as defendant the court or tribunal and not the judicial officer or member personally.

(6) The application must be accompanied by a supporting affidavit.

(7) The supporting affidavit must contain—

(a) the grounds relied on in support of the relief sought; and

(b) the facts relied on.

(8) If subrule (2) (b) applies, but has not been complied with, a ground mentioned in the subrule must not be relied on.

(9) If subrule (2) (c) applies, but has not been complied with, a ground mentioned in the subrule must not be relied on without the court's leave.

3557 Judicial review—time for starting proceeding

(1) This rule applies in relation to an application for prerogative relief.

Note For an application for a statutory order of review, see the Judicial Review Act, s 10 (Period in which application for order of review must be made).

(2) The application must be filed in the court not later than 60 days after the day when the grounds for the grant of the relief sought first arose.

(3) If the relief sought is in relation to any order, conviction or other proceeding, the day when the grounds for the grant of the relief first arose is taken to be the day of the making of the order, conviction or other proceeding.

(4) The court may extend the time mentioned in subrule (2) only in special circumstances.

Note Rule 6351 (Time—extending and shortening by court order) authorises the extending of time.

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3558 Judicial review—declaration or injunction

(1) A declaration or injunction (other than a prerogative injunction) may also be sought in an application for prerogative relief if appropriate, having regard to—

(a) the nature of the matters in relation to which relief may be sought; and

(b) the nature of the entities against whom relief may be sought; and

(c) all the other circumstances of the case.

(2) The court may make the declaration or grant the injunction sought instead of, or in addition to, the prerogative relief if it considers it appropriate, having regard to the matters mentioned in subrule (1).

(3) However, if the court considers that—

(a) the declaration or injunction mentioned in subrule (1) should not be granted in the application for prerogative relief; and

(b) the relief may have been granted if it had been sought in a proceeding started by another originating process at the time of starting the application for prerogative relief;

the court may, instead of refusing the application, order the proceeding to continue as if it had been started in the way mentioned in paragraph (b).

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights).

3559 Judicial review—other prerogative relief etc

On an application for prerogative relief—

(a) any prerogative relief, declaration or injunction may be sought instead of, or in addition to, any other prerogative relief, declaration or injunction if it relates to the same matter; or

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(b) the court may grant the prerogative relief, declaration or injunction it considers the most appropriate available, even if it is not included in the application.

Note For statutory orders of review, see the Judicial Review Act, s 8 (Effect of Act on other rights) and s 11 (Application for order of review not limited to grounds in application).

3560 Judicial review—additional orders

(1) If—

(a) the relief sought in an application for prerogative relief is a certiorari order in relation to an order of an entity; and

(b) the court is satisfied that there are grounds for setting the order aside;

the court may, in addition to setting aside the order, remit the matter to the entity for further consideration, with any directions (including, for example, the setting of time limits for further consideration, and for preparatory steps in the further consideration) the court considers appropriate.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) If the relief sought in an application for prerogative relief is a certiorari order or prohibition order in relation to an order made in a proceeding, the court may—

(a) by order, suspend the operation of the order, either indefinitely or until further order of the court; or

(b) order a stay of the proceeding until—

(i) the application is decided; or

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(ii) another time that the court orders.

Note For statutory orders of review, see the Judicial Review Act, s 16 (Stay of proceedings) and s 17 (Powers of Supreme Court in relation to applications for order of review).

3561 Judicial review—application for statutory order of review and prerogative relief etc

(1) This rule applies if the following relate to the same matter:

(a) an application for a statutory order of review;

(b) an application for—

(i) prerogative relief; or

(ii) prerogative relief and a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction).

(2) The applications may be made in a single application.

Note See the Judicial Review Act, s 8 (Effect of Act on other rights).

3562 Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review

(1) This rule applies if—

(a) an application is made under this part for a statutory order of review in relation to—

(i) a decision; or

(ii) conduct engaged in, or proposed to be engaged in, for the purpose of making a decision; or

(iii) a failure to make a decision; and

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(b) the court considers—

(i) the decision is not a decision to which this Act applies as defined in the Judicial Review Act, dictionary; and

(ii) prerogative relief or a declaration or injunction mentioned in rule 3558 (1) (Judicial review—declaration or injunction) may have been granted in relation to the decision, conduct or failure if it had been sought in an application for prerogative relief at the time of starting the application for a statutory order of review.

(2) The court may, instead of refusing the application, order the proceeding to continue as if it had been started as an application for prerogative relief.

3563 Judicial review—filing and serving statements

(1) On the filing of a judicial review application in relation to a decision by a person (the ***decision-maker***), or not later than 7 days after the day the application is filed, the plaintiff must file copies of any of the following documents in the plaintiff's possession, unless a copy of the document has been filed previously in the proceeding:

(a) a statement made by the decision-maker of the terms of the decision;

(b) either—

(i) for an application for a statutory order of review—a statement under the Judicial Review Act, section 13 (Reasons for decision may be obtained) or the *ACT Civil and Administrative Tribunal Act 2008*, section 22B (Requirement to give reasons statements); or

(ii) any other statement given by or on behalf of the decision-maker purporting to be a statement of reasons for the decision.

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(2) The plaintiff must serve a stamped copy of each statement filed by the plaintiff under subrule (1) on each person on whom a copy of the judicial review application is served not later than 5 days after the day the statements are filed.

Note 1 See r 62 (When originating application must be served) and r 64 (Originating application—filing and service of supporting affidavits).

Note 2 If a defendant objects to the competency of an application for a statutory order of review, the defendant may file a conditional notice of intention to respond under r 111 (Conditional notice of intention to respond).

3564 Judicial review—stay or dismissal of application for statutory order of review on return date

(1) This rule applies if—

(a) a person files an application in the court for a statutory order of review (the ***review application***); and

(b) a party to the review application applies for an order under the Judicial Review Act, section 8 (2) (b).

(2) The party may apply for the review application to be stayed or dismissed as mentioned in rule 3566 (1) (a) (ii) (Judicial review—power of the court to stay or dismiss applications in certain circumstances) on the return date for the review application.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) The party must serve a stamped copy of the application on each other party to the review application at least 3 days before the return date for the review application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the shortening of time.

3565 Judicial review—directions on return date

(1) On the return date for a judicial review application, the court may give any direction about the conduct of the proceeding it considers appropriate.

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(2) Without limiting subrule (1), the court may consider, and give directions in relation to, the following matters:

(a) discovery and interrogatories;

(b) inspection of property;

(c) admissions of fact or documents;

(d) defining the issues by pleadings or otherwise;

Note Pt 2.6 (Pleadings) applies to a proceeding started by an originating application only if the court orders the plaintiff to file and serve a statement of claim.

(e) the standing of affidavits as pleadings;

(f) including parties;

(g) service of documents;

(h) amendments;

(i) the filing of affidavits.

Note The court also has a general power to make directions about the conduct of a proceeding (see r 1401 (Directions generally)).

(3) Without limiting subrule (1), the court may—

(a) order that an agreed bundle of documents be prepared by the parties; or

(b) order the service or exchange of expert reports; or

(c) order that a party serve a copy of the application on the Attorney-General; or

(d) order that a party give notice of the application to the people, and in the way, the court directs; or

(e) set a date for hearing; or

(f) set a date after which the parties are directed to arrange with the registrar a date for hearing.

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(4) The court may at any time amend or revoke a direction or order made under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction or order.

(5) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

3566 Judicial review—power of the court to stay or dismiss applications in certain circumstances

(1) The court may, by order, stay or dismiss a judicial review application, or a claim for relief in a judicial review application, if the court considers that—

(a) it would be inappropriate—

(i) for the proceeding in relation to the application or claim to be continued; or

(ii) to grant the application or claim (including, for an application for a statutory order of review, because the Judicial Review Act, section 8 (2) (b) (Effect of Act on other rights) applies); or

(b) the application is incompetent; or

(c) no reasonable basis for the application or claim is disclosed; or

(d) the application or claim is frivolous or vexatious; or

(e) the application or claim is an abuse of the court's process.

Note The registrar may also reject a document that is filed if it does not comply with these rules (see r 6140 (Rejecting documents—noncompliance with rules etc) or if it is an abuse of the court's process or is frivolous or vexatious (see r 6142 (Rejecting documents—abuse of process etc)).

(2) A power of the court under this rule may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an

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application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.

(3) The court may make an order under this rule on application by a party to the proceeding or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.

(4) The court may receive evidence on the hearing of an application for an order under this rule.

3567 Judicial review—additional requirements for certiorari order

A certiorari order may be granted only if—

(a) a copy of the order, warrant, conviction, inquisition or record relevant to the proceeding, verified by an affidavit, has been filed in the court; or

(b) the failure of the plaintiff to file the copy has been explained to the court's satisfaction.

3568 Judicial review—no proceeding in relation to things done under mandamus order

A proceeding must not be started or continued against someone in relation to anything done in obedience to an order of the court for relief in the nature of mandamus.

3569 Judicial review—disclaimer in relation to quo warranto order

(1) This rule applies in relation to an application for a quo warranto order in relation to the defendant's office mentioned in the application.

(2) The defendant may, by notice, disclaim the office.

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(3) The notice must be signed by the defendant and witnessed by a person authorised to take an affidavit.

Note See the *Evidence Act 1995 (Cwlth)*, s 186 (Swearing of affidavits before justices of the peace, notaries public and lawyers) and the *Oaths and Affirmations Act 1984*, s 11 (Authority to administer oath etc).

(4) The defendant must file the notice in the court, and serve a stamped copy on the plaintiff for the quo warranto order, not later than 28 days after the day the application for the order is served on the defendant.

(5) The plaintiff for the quo warranto order may apply to the court for judgment of ouster against the defendant, with costs.

(6) The application is made by filing a draft judgment in the court.

(7) Part 6.2 (Applications in proceedings) does not apply to the application.

(8) The draft judgment need not be served on anyone unless the court otherwise orders on its own initiative.

(9) The court may enter judgment of ouster against the defendant, with costs without a hearing.

3570 Judicial review—proceeding in relation to statement of reasons

(1) This rule applies if a decision-maker or requester applies to the court for an order or declaration under the Judicial Review Act, section 13 (Reasons for decisions may be obtained).

Note 1 The application is an originating application (see r 34 (2)). Div 2.2.3 (Originating applications) contains provisions about the contents of originating applications, the filing and service of originating applications, etc).

Note 2 Rule 60 (3) (Originating application—content etc) provides that the originating application must state specifically the orders or other relief sought in the proceeding.

(2) The application must be supported by an affidavit.

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(3) The affidavit must contain—

(a) the plaintiff's name and description; and

(b) the decision for which reasons are sought; and

(c) the grounds relied on in support of the relief sought; and

(d) the facts relied on.

(4) On the return date for the application, the court may give any direction about the conduct of the proceeding it considers appropriate, including any direction in rule 3565 (Judicial review—directions on return date) appropriate to the proceeding.

(5) In this rule:

decision-maker—see the Judicial Review Act, section 13 (1).

requester—see the Judicial Review Act, section 13 (1).

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Part 3.11 Legal profession

Division 3.11.1 Legal profession—general

3600 Definitions—pt 3.11

In this part:

admission means admission to the legal profession under the Legal Profession Act.

APLEC means the Australasian Professional Legal Education Council.

application for a costs assessment means an application for costs assessment under the Legal Profession Act, division 3.2.7.

application for admission means an application under the Legal Profession Act, section 26 (1).

approved academic institution means an academic institution approved under rule 3606.

approved course of study means a course of study approved under rule 3607A.

approved PLT course means a course approved under rule 3607G.

approved PLT provider means an institution approved under rule 3607E.

approved subject means a subject approved under rule 3607B.

LACC means the Law Admissions Consultative Committee responsible to the Council of Chief Justices of Australia and New Zealand.

Legal Profession Act means the *Legal Profession Act 2006*.

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3601 Terms used in Legal Profession Act

A term used in the Legal Profession Act has the same meaning in this part.

Note For example, the following terms are defined in the Legal Profession Act, dict:

- admissions board
- admission to the legal profession
- bar council
- compliance certificate (see s 30)
- conviction (see s 13 (1))
- costs assessment (see s 261)
- law practice
- law society council
- local roll
- suitability matters (for an individual) (see s 11).

3602 Application—pt 3.11

This part applies only in relation to the Supreme Court.

Division 3.11.2 Admission of local lawyers

Subdivision 3.11.2.1 Academic qualifications

3605 Admission—approved academic qualifications—Legal Profession Act, s 21 (5)

(1) The academic qualifications approved for admission to the legal profession in the ACT are—

(a) successful completion of a course of study approved under rule 3607A, that includes subjects approved under rule 3607B, provided by an institution approved under subdivision 3.11.2.2, which requires a student to acquire and demonstrate appropriate understanding of, and competence in, the following areas of law:

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(i) criminal law and procedure;

(ii) the law of torts;

(iii) the law relating to contracts;

(iv) the law relating to property, both real (including the law relating to Torrens system land) and personal;

(v) equity, including trusts;

(vi) company law;

(vii) administrative law;

(viii) constitutional law of—

(A) the Commonwealth; and

(B) the Territory, a State or the Northern Territory;

(ix) civil procedure;

(x) evidence;

(xi) ethics and professional responsibility; and

(b) that the applicant has a sufficient knowledge of written and spoken English to engage in legal practice in the ACT.

(2) The admissions board may require an applicant to pass an examination nominated by the admissions board for subrule (1) (b).

(3) The admissions board may determine that an applicant is not required to satisfy the requirements specified in subrule (1) (a) if the admissions board is satisfied that the applicant has an appropriate understanding of, and competence in, each area of the law mentioned in the subrule.

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Subdivision 3.11.2.2 Approval of academic institutions

3606 Approved academic institutions

(1) Subject to subrule (3) (a), each of the following is an approved academic institution:

(a) the Australian National University;

(b) the University of Canberra;

(c) an institution recognised by another Australian jurisdiction as providing a course of study which—

(i) satisfies the academic requirements for admission in that jurisdiction; and

(ii) requires a student to acquire and demonstrate an appropriate understanding of, and competence in, each area of law mentioned in rule 3605 (1) (a).

(2) The admissions board may only designate an institution under subrule (1) (c) if the admissions board is satisfied that the institution will competently provide an approved course of study in law.

(3) The admissions board may—

(a) by written notice given to an academic institution not less than 1 year before the notice is to take effect, withdraw approval of the institution; or

(b) by written notice given to an academic institution not less than 6 months before the notice is to take effect, impose or vary a condition on the approval of the institution, which the admissions board considers appropriate, including a condition resulting from a review of the institution under rule 3607.

3607 Monitoring and review

(1) The admissions board may monitor and, if it considers it reasonable to do so, from time to time, review—

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(a) the performance of, and the resources available to, an approved academic institution, in providing an approved course of study; and

(b) the content and conduct of an approved course of study or any approved subject provided by the institution.

(2) The admissions board may, after consulting an approved academic institution—

(a) appoint 1 or more people to conduct a review of the approved course of study or of any subject in an approved course of study conducted by that academic institution; and

(b) determine the terms of reference for the review.

(3) The admissions board must give the approved academic institution a copy of any report received by the admissions board, as a result of a review.

(4) It is a condition of approval of each approved academic institution that, unless the admissions board determines otherwise, the cost of any monitoring or review must be borne by the institution.

(5) An approved academic institution must give the admissions board or reviewer the information required by the admissions board or its reviewer, for any monitoring or review carried out under this rule.

Subdivision 3.11.2.3 Approval of course of study

3607A Approval of course of study

(1) Subject to subrule (2) (a), the admissions board may approve a course of study which the admissions board considers will give a student an appropriate understanding of, and competence in, each area of law mentioned in rule 3605 (1) (a).

(2) The admissions board may—

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(a) by written notice given to an approved academic institution not less than 1 year before the notice is to take effect, withdraw approval of any course of study; or

(b) by written notice given to an approved academic institution not less than 6 months before the notice is to take effect, impose or vary any condition on the approval of a course of study which the admissions board considers appropriate, including any condition resulting from a review of the approved course of study or of any subject in an approved course of study under rule 3607.

3607B Approval of subjects

(1) The admissions board may approve any subject or part of a subject in either—

(a) a course of study approved under rule 3607A; or

(b) a course of study at any other institution.

(2) Before approving a course of study under subrule (1), the admissions board must be satisfied that the course provides a student with appropriate understanding of, and competence in, the whole or any part of an area of law mentioned in rule 3605 (1) (a).

(3) The admissions board may, as it considers appropriate, by written notice to an approved academic institution—

(a) withdraw approval of any subject or part of a subject; or

(b) impose or vary any condition on the approval of that subject or part of a subject, including any condition resulting from a review under rule 3607.

(4) If a person starts an approved course of study incorporating an approved subject and satisfactorily completes the subject, the person is to be treated as having completed an approved subject, despite withdrawal of approval after the person has started the subject.

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3607C Changes to approved courses of study

(1) The head of each approved academic institution providing an approved course of study must notify the admissions board of—

(a) any material change to the curriculum for the approved course of study; and

(b) any proposed material change to the curriculum for the approved course of study; and

(c) the head's opinion about whether successful completion of the approved course of study requires the demonstration of a satisfactory level of understanding and competence in the areas of law mentioned in rule 3605 (1) (a) (i) to (xi).

(2) The admissions board must, after considering the material mentioned in subrule (1), determine that the approval of the approved course of study is confirmed or not confirmed.

(3) The admissions board must, by written notice to the approved academic institution, not later than 30 September in the year that notice is given under subrule (1), tell the institution that—

(a) approval of the approved course of study is confirmed or not confirmed; and

(b) if the approval of the approved course of study is not confirmed—the approval may be withdrawn unless the institution changes the curriculum or proposed curriculum to the board's satisfaction.

(4) The admissions board may withdraw the approval of an approved course of study if—

(a) the board has determined not to confirm the approval of the approved course of study; and

(b) the board has given notice to the approved academic institution under subrule (3); and

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(c) the approved academic institution has not changed the curriculum or proposed curriculum to the board's satisfaction.

Subdivision 3.11.2.4 Practical legal training

3607D Practical legal training

(1) The practical legal training approved for admission to the legal profession in the ACT is—

(a) successful completion of an approved PLT course conducted by an approved PLT provider, in accordance with subdivision 3.11.2.5; and

(b) the demonstration to the satisfaction of the admission board of the competency standards for practical legal training approved by the LACC in consultation with the APLEC.

(2) A person is eligible to undertake practical legal training under this subdivision if the person has completed—

(a) an approved course of study under subdivision 3.11.2.3 at an approved academic institution under subdivision 3.11.2.2; or

(b) another tertiary qualification in law that satisfies the academic requirements for admission to the legal profession in the Australian jurisdiction where the tertiary qualification was obtained.

Subdivision 3.11.2.5 Practical legal training providers and courses

3607E Approval of PLT providers

(1) Subject to subrule (2) (a), each of the following is an approved PLT provider:

(a) the School of Legal Practice within the College of Law of the Australian National University;

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(b) an institution that the admissions board is satisfied will competently conduct an approved PLT course.

(2) The admissions board may—

(a) by written notice to a PLT provider not less than 1 year before the notice is to take effect, withdraw approval of that PLT provider; or

(b) by written notice to a PLT provider not less than 6 months before the notice is to take effect, impose or vary any condition on the approval of the PLT provider, which the admissions board considers appropriate, including any condition resulting from a review under rule 3607F.

3607F Monitoring and review of approved PLT provider

(1) The admissions board may monitor, and, if it considers it reasonable to do so, from time to time review—

(a) the performance of, and the resources available to, an approved PLT provider in providing an approved PLT course; and

(b) the content and conduct of an approved PLT course, or any subject in an approved PLT course, provided by the PLT provider.

(2) The admissions board may, after consulting an approved PLT provider—

(a) appoint 1 or more people to conduct a review of the approved PLT course or of any subject in an approved PLT course conducted by that PLT provider; and

(b) determine the terms of reference for the review.

(3) The admissions board must give the approved PLT provider a copy of any report received by the admissions board, as a result of a review.

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(4) It is a condition of approval of each approved PLT provider that, unless the admissions board determines otherwise, the costs of any such monitoring or review must be borne by the provider.

(5) An approved PLT provider must give the admissions board or its reviewer the information the admissions board or reviewer may require, for any monitoring or review carried out under this rule.

3607G Approval of training course

(1) The admissions board may approve a course which the admissions board considers will demonstrate the competency standards mentioned in rule 3607D (1) (b).

(2) The admissions board may approve a course which is to be conducted wholly or partly online.

(3) The admissions board may, as it considers appropriate, by written notice to an approved PLT provider—

(a) withdraw approval for a course; or

(b) impose or vary any condition on the approval of that course, including any condition resulting from a review of an approved PLT course or subject under rule 3607F.

3607H Changes to approved courses of study

(1) The director of each approved academic institution providing an approved PLT course must notify the admissions board of—

(a) any material change to the curriculum for the approved PLT course; and

(b) any proposed material change to the curriculum for the approved PLT course; and

(c) the director's opinion about whether successful completion of the approved PLT course requires evidence of the competency standards mentioned in rule 3607D (1) (b).

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(2) The admissions board must, after considering the material mentioned in subrule (1), determine that the approval of the approved PLT course is confirmed or not confirmed.

(3) The admissions board must, by written notice to the approved academic institution, not later than 30 September in the year that notice is given under subrule (1), tell the institution that—

(a) approval of the approved PLT course is confirmed or not confirmed; and

(b) if the approval of the approved PLT course is not confirmed—the approval may be withdrawn unless the institution changes the curriculum or proposed curriculum to the board's satisfaction.

(4) The admissions board may withdraw the approval of an approved PLT course if—

(a) the board has determined not to confirm the approval of the approved PLT course; and

(b) the board has given notice to the approved academic institution under subrule (3); and

(c) the approved academic institution has not changed the curriculum or proposed curriculum to the board's satisfaction.

Subdivision 3.11.2.6 Admission—application and related matters

3608 Admission—application for admission

(1) An application for admission must be made by originating application.

Note See approved form 3.46 (Originating application for admission as a lawyer) AF2007-70.

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(2) The application must be supported by—

(a) an affidavit by the applicant; and

(b) at least 3 affidavits of character; and

(c) a statement of attainment from the approved PLT provider naming the applicant as having successfully completed the approved PLT course provided by the PLT provider.

(3) The applicant must file with the application a copy of the application and the affidavits mentioned in subrule (2).

(4) The applicant's affidavit must—

(a) state whether the person has been convicted of an offence in Australia or a foreign country, and if so—

(i) the nature of the offence; and

(ii) the court by which, and the date when, the person was convicted; and

(iii) how long ago the offence was committed; and

(iv) the person's age when the offence was committed; and

(b) state whether there are other suitability matters relevant to the applicant's fitness for admission; and

(c) state an address that is the applicant's address for service.

Note ***Address for service*** is defined in the dictionary.

(5) An affidavit of character by a person must state—

(a) how long the person has known the applicant; and

(b) the circumstances in which the person has known the applicant; and

(c) whether there is or has been any professional or business relationship between the person and the applicant and, if so, the nature of the relationship; and

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(d) whether the person is related to the applicant by blood, affinity or adoption; and

(e) the person's opinion about the fame and character of the applicant.

(6) The court may direct that further evidence about an applicant's fame and character be given in support of the application.

3609 Admission—when application must be made

An application for admission must be filed in the court not later than 21 days before the day the application is to be heard.

3610 Admission—compliance certificate (Legal Profession Act, s 30 (2))

The admissions board must do the things required under the Legal Profession Act, section 30 (2) in relation to an application for admission not later than 7 days after the day the admissions board decides to give a compliance certificate to the applicant for admission.

3611 Admission—objection by bar council or law society council

(1) This rule applies if the bar council or law society council intends to object to an application for admission.

(2) Not later than 4 days before the day the application is to be heard, it must serve on the applicant—

(a) notice of its intention to object and the grounds for the objection; and

(b) a copy of each affidavit it intends to use in support of its objection.

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(3) After serving a notice under subrule (2), and before the hearing of the application for admission, the bar council or law society council must file in the court a copy of—

(a) the notice; and

(b) each affidavit it intends to use in support of its objection; and

(c) an affidavit of service.

3612 Admission—appearance by bar council or law society council

(1) The bar council or law society council must, if asked by the court, appear and be heard on the hearing of an application for admission.

(2) The bar council or law society council may, on its own initiative, appear and be heard on the hearing of an application for admission, otherwise than for the purpose of objecting to the admission of the applicant.

3613 Admission—applicant's duty of frankness

In addition to complying with the requirements of this division, an applicant for admission must bring to the attention of the court anything that is relevant to the applicant's fitness for admission.

3614 Admission—oath or affirmation

(1) A person must, before being admitted, take an oath or make an affirmation before the court.

(2) An oath taken under this rule must be in the following form:

I, (*name*), swear that I will well and honestly conduct myself in the practice of law as a lawyer of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

So help me God!

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(3) An affirmation made under this rule must be in the following form:

I, (*name*), solemnly and sincerely affirm that I will well and honestly conduct myself in the practice of law as a lawyer of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability.

3615 Admission—entry on local roll

After a person is admitted, the registrar must enter on the local roll—

(a) the person's name; and

(b) the date of the person's admission.

Division 3.11.3 Assessment of client costs

3620 Application—div 3.11.3

This division applies to an application for a costs assessment.

3621 Form of application

(1) An application for a costs assessment must be made by originating application.

Note See approved form 3.47 (Originating application for assessment of legal costs) AF2011-66.

(2) The application must be supported by—

(a) if the legal costs are subject to a costs agreement—a copy of the agreement; and

(b) if the legal costs are subject to a retainer—a copy of the retainer; and

(c) if the application is made under the Legal Profession Act, section 296—

(i) an affidavit by the applicant stating the matters set out in that Act, section 300 (2); and

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(ii) a sufficient description of the work to which the legal costs relate to enable the legal costs to be assessed.

(3) The applicant must file with the application 2 copies of the application and supporting documents.

3622 Application for leave to apply out of time

An application for leave to apply for a costs assessment out of time must be in accordance with part 6.2 (Applications in proceedings).

3623 Directions

(1) On the filing of an application, the registrar must—

(a) set a date for directions before the registrar; and

(b) tell the parties the date.

(2) At the directions hearing, the registrar must set a time and date for the assessment of the legal costs.

3624 Response to application

(1) This rule applies if the respondent to an application is a law practice.

(2) The respondent must file—

(a) an affidavit stating the matters set out in the Legal Profession Act, section 300 (2); and

(b) a sufficient description of the work to which the legal costs relate to enable the legal costs to be assessed; and

(c) if the legal costs are subject to a costs agreement—a copy of the costs agreement if the applicant has not filed a copy of the agreement; and

(d) if the legal costs are subject to a retainer—a copy of the retainer if the applicant has not filed a copy of the retainer.

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3625 Notice of objections to legal costs

(1) The party liable to pay the legal costs may by notice object to all or part of the legal costs.

(2) A notice of objections must briefly state the reasons for the objection identifying any issue of law or fact that the objector considers the registrar must consider to make a decision in favour of the objector.

(3) The party liable to pay the legal costs must file the notice of objections and serve a stamped copy on the other party not later than 14 days before the day the legal costs are to be assessed.

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Part 3.12 Family violence and personal violence proceedings

Division 3.12.1 Family violence and personal violence proceedings—general

3800 Terms used in Family Violence Act and Personal Violence Act

A term used in the *Family Violence Act 2016* or *Personal Violence Act 2016* has the same meaning in this part.

Examples

affected person, protection order

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3801 Application—pt 3.12

This part only applies to a family violence or personal violence proceeding.

Note This part also applies to a proceeding under the *Domestic Violence and Protection Orders Act 2008* (repealed) (see *Family Violence Act 2016*, s 199 and *Personal Violence Act 2016*, s 199).

3802 Rules in ch 2 disapplied

(1) Except as provided by subrule (2), chapter 2 does not apply to a family violence or personal violence proceeding.

(2) The following rules apply, with any necessary changes, to a family violence and personal violence proceeding:

(a) rule 30 (Who may start and carry on a proceeding);

(b) rule 270 (Consolidation etc of proceedings);

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(c) rule 502 (Amendment—of documents);

(d) rule 1166 (Discontinuance or withdrawal by party representing someone else etc);

(e) rule 1401 (Directions generally);

(f) part 2.12 (Expert evidence);

(g) division 2.14.2 (Failure to comply with rules or order);

(h) rule 1506 (Trial—adjournment etc);

(i) rule 1508 (Order of evidence and addresses);

(j) rule 1600 (Orders—required by nature of case);

(k) rule 1601 (Judgment book);

(l) rule 1605 (1) and (2) (Orders—making and effect);

(m) rule 1607 (Orders—certified duplicate);

(n) rule 1608 (Orders—reasons);

(o) rule 1609 (Orders—reservation of decision);

(p) part 2.18 (Enforcement);

(q) part 2.21 (Representation by solicitors) other than rule 2802 (3) (b);

(r) rule 2901 (Copies of documents from registrar) but not in relation to an order or document that includes an affected person's home or work address or other information that may allow the affected person to be located;

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(s) rule 2903 (Inspection of registry files) but only—

(i) to the extent that it allows a party to the proceeding to inspect, or take a copy of, a document filed in the registry in relation to the proceeding; and

(ii) in relation to a document that does not include an affected person's home or work address or other information that may allow the affected person to be located.

Note 1 The court may, by order, dispense with the disapplication of a rule under r (1) or the application of a rule under r (2) (see r 6 (Dispensing with rules)).

Note 2 Court procedures must be as simple, quick and inexpensive as is consistent with achieving justice (see *Family Violence Act 2016*, s 12 and *Personal Violence Act 2016*, s 9).

3803 Other disapplied rules

The following rules do not apply to a family violence or personal violence proceeding:

(a) rule 6103 (1) (a) (i) (Documents—layout etc);

(b) rule 6120 (b) (Filing documents—number of copies);

(c) rule 6256 (Appeals from registrar's orders etc);

(d) division 6.8.3 (Service—Magistrates Court);

(e) rule 6430 (Service in Australia but outside ACT);

(f) rule 6435 (Service on children);

(g) rule 6436 (Service on people with mental disabilities);

(h) rule 6460 (Substituted service);

(i) rule 6464 (4) (Acceptance of service by solicitor);

(j) rule 6467 (2) (a) (iii) (Proof of service);

(k) rule 6469 (2) (b) (Change of address for service).

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3804 Correction of name of respondent

The registrar may at any time correct a mistake, omission or error in the name or identity of the respondent in a proceeding in—

(a) a document filed in the court in the proceeding; or

(b) an order made based on the name in the original application.

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Part 3.13 Workers compensation

Division 3.13.1 Workers compensation proceedings—general

3900 Definitions—pt 3.13

In this part:

arbitration means arbitration under the Workers Compensation Act.

claim includes a matter or question arising under the Workers Compensation Act to be decided by arbitration.

contractor—see the Workers Compensation Act, section 13 (Subcontracting).

injury notice—see the Workers Compensation Act, section 123 (The notice for an injury).

prescribed scale of costs means the scale of costs in schedule 4 (Scale of costs).

principal—see the Workers Compensation Act, section 13 (Subcontracting).

representative, for a party to an arbitration, means a lawyer or other person who represents the party.

third-party respondent—see rule 3920 (Arbitration—including other parties).

Workers Compensation Act means the *Workers Compensation Act 1951*.

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3901 Terms used in Workers Compensation Act

A term used in the Workers Compensation Act has the same meaning in this part.

Note For example, the following terms are defined in the Workers Compensation Act, dictionary:

- compulsory insurance policy
- dependant
- employer
- injured worker (see s 86)
- insurer
- medical referee
- registered agreement
- self-insurer.

3902 Application—pt 3.13

This part applies only in relation to—

(a) the Magistrates Court; and

(b) an injury to which the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, applies.

Note With some exceptions (see Workers Compensation Act, s 234 (now expired)), the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, does not apply to injuries that happened before the commencement of the amending Act ie 1 July 2002.

3903 Workers compensation proceedings—application of ch 2 generally

(1) Except as provided by this rule, chapter 2 does not apply to a proceeding under this part.

(2) The applied civil rules apply, with any necessary changes, to a proceeding under this part.

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(3) Part 2.18 (Enforcement) applies, with any necessary changes, to a proceeding for enforcement of, or the recovery of money payable under, an award of the court or a registered agreement as if it were a judgment of the court.

(4) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
  - rule 282 (Person with legal disability—approval of settlement etc)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- division 2.8.7 (Non-party production)
- division 2.12.1 (Expert evidence generally)
- rule 1617 (Payment into court—amount recovered by person with legal disability)
- rule 1618 (Person with legal disability—orders about recovered amounts etc)
- part 2.17 (Costs), other than the following:
  - rule 1722 (Costs—solicitors' costs generally)
  - rule 1723 (Costs—*relevant amount* for Magistrates Court proceedings)
  - rule 1726 (Costs—amendment of documents)
  - rule 1729 (Costs—extending or shortening time)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

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Division 3.13.2 Workers compensation—applications for arbitration

Note to div 3.13.2

The *Workers Compensation Regulation 2002*, div 6.2 deals with conciliation. A conciliation of a matter in issue arising from a worker's claim for compensation (other than rejection of the claim by an insurer) must be held before arbitration of the matter (see s 38). The *Workers Compensation Regulation 2002*, pt 7 provides for a committee rather than the court to arbitrate matters in certain cases (see esp s 51).

3904 Application for arbitration—Commercial Arbitration Act not apply

The *Commercial Arbitration Act 2017* does not apply to an arbitration.

3905 Application for arbitration—by worker

(1) An injured worker may ask that a claim be decided by arbitration by filing an application in the court.

Note See approved form 3.57 (Application for arbitration by injured worker) AF2010-150.

(2) The application must state briefly, but specifically, the claim to be arbitrated.

3906 Application for arbitration—by dependant or estate of deceased worker

(1) A dependant, or the personal representative, of a deceased worker may ask that a claim be decided by arbitration by filing an application in the court.

Note See approved form 3.58 (Application for arbitration by dependants or personal representative of deceased worker) AF2006-495.

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(2) The application must—

(a) contain details of each dependant on whose behalf the application is made; and

(b) state briefly, but specifically, the claim to be arbitrated; and

(c) be accompanied by a certified copy of—

(i) the worker's death certificate; and

(ii) the birth certificate of each dependant.

(3) In this rule:

dependant includes a person claiming to be a dependant.

3907 Application for arbitration—by employer or insurer

(1) An employer or insurer may ask that a claim be decided by arbitration by filing an application.

Note See approved form 3.59 (Application for arbitration by employer or insurer) AF2006-496.

(2) The application must state briefly, but specifically, the claim to be arbitrated.

3909 Application for arbitration—injury notice and medical evidence

(1) An application for arbitration filed in the court must be accompanied by—

(a) if available to the applicant—a copy of the injury notice in relation to the claim; and

(b) a copy of all available medical evidence the applicant intends to rely on.

(2) If no injury notice was given in relation to the claim, the application must contain details of why no notice was given.

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3910 Application for arbitration—copies

When filing an application for arbitration, and the documents accompanying the application mentioned in rule 3909, in the court, the applicant must also file—

(a) 1 copy for each respondent; and

(b) for each respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3911 Application for arbitration—service on respondent

(1) An applicant for arbitration must serve a sealed copy of the application on each respondent not later than 14 days after the day the application is filed in the court.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(2) The applicant must file in the court an affidavit of service of the application on a respondent unless the respondent has filed an answer.

(3) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the applicant must serve a sealed copy of the order with the application.

3912 Application for arbitration—service on insurer

(1) An employer (other than a self-insurer) who is a respondent to an application for arbitration must serve a copy of the application on the employer's insurer not later than 7 days after the day the employer is served with the application.

(2) A party included as a third-party respondent must serve a copy of the notice including the party on the party's insurer not later than 7 days after the day the party is served with the notice.

Note Rule 3920 deals with including other parties.

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3913 Application for arbitration—answer by respondent or third-party respondent

(1) A respondent to an application for arbitration may file an answer.

Note See

- approved form 3.60 (Answer by respondent (employer or insurer)) AF2008-153
- approved form 3.67 (Answer by respondent (injured worker)) AF2008-145
- approved form 3.68 (Answer by respondent (dependants or personal representative of dead worker)) AF2008-146.

(2) The answer must be filed not later than 28 days after the day the respondent is served with the application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

(3) A third-party respondent may file an answer to the third-party notice that includes the third-party respondent not later than 28 days after the day the respondent is served with the notice.

Note Rule 3920 deals with including other parties.

(4) When filing an answer in the court, the respondent must also file—

(a) 1 copy for the applicant; and

(b) 1 copy for each other respondent; and

(c) for each other respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3914 Application for arbitration—liability and particulars subject to answer

(1) An answer to an application for arbitration must admit or deny each claim and admit or deny each particular set out in the application.

(2) If no admission or denial of a claim or particular is made, the claim or particular is taken to be admitted.

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(3) If a respondent worker does not file an answer, subrule (2) does not apply to a particular denying, completely or partly, liability to pay compensation.

(4) If a respondent employer wishes to deny a claim or particular, but has not done so in an answer, the court may—

(a) allow the respondent to raise a matter the respondent should have included, or given notice of, in an answer; or

(b) adjourn the arbitration to a stated time or for a stated period to allow the respondent to file an answer.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

3915 Application for arbitration—service of answer

(1) A respondent must serve a sealed copy of the answer on the applicant and each other respondent.

Note The answer must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(2) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the respondent must serve a sealed copy of the order with the answer.

3916 Application for arbitration—amendment

(1) At any stage of a proceeding, the court may give leave for a party to amend, or direct a party to amend, any document filed in the court in the proceeding in the way the court considers appropriate.

(2) However, this rule does not apply to a document accompanying an application for arbitration mentioned in rule 3909 (Application for arbitration—injury notice and medical evidence).

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(3) The court may give leave, or give a direction, on application by the party or on its own initiative.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or a direction under this rule.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

(4) If there is a mistake in the name or identity of a party, the court may give leave for, or direct the making of, amendments necessary to correct the mistake, even if the effect of the amendments is to substitute another person as a party.

(5) An amendment of a document made under this rule must be distinguished so that the changes are identifiable.

(6) A party amending a document must file and serve on each other active party—

(a) a copy of the document that contains the amendments written on it; or

(b) a revised document incorporating and distinguishing the amendments.

(7) This rule does not apply in relation to an amendment of an order.

Note See r 6906 (Mistakes in orders or court certificates) for amendment of orders.

3917 Application for arbitration—minor amendment or amendment by consent

(1) This rule applies to an amendment to a document in a proceeding that is—

(a) minor and will not have any substantive effect on the case to be put by any party to the proceeding; or

(b) consented to by all parties to the proceeding.

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(2) Rule 3916 does not apply to an amendment mentioned in subrule (1).

(3) A party may amend the document by filing, and serving on each other active party in the proceeding—

(a) a copy of the document that contains the amendments written on it; or

(b) a revised document incorporating and distinguishing the amendments.

3918 Application for arbitration—discontinuance

(1) An applicant may discontinue a proceeding, or withdraw part of it, at any time.

(2) The applicant and another party to the proceeding may agree, in writing, that the applicant may discontinue the proceeding, or withdraw part of it, against the other party at any time.

(3) A discontinuance or withdrawal under this rule is made by filing in the court a notice of discontinuance or withdrawal and serving a stamped copy of the notice on the other active parties in the proceeding.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(4) If a proceeding is discontinued or withdrawn, a party who has not agreed to the discontinuance or withdrawal may apply to the court for an order that the applicant pay the party's costs of the proceeding up to when notice of the discontinuance or withdrawal is served on the party.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(5) Subrule (4) is subject to rule 3968 (Workers compensation costs—generally).

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Division 3.13.3 Workers compensation—parties for arbitration

3919 Arbitration—necessary parties

(1) A person whose participation is necessary for the court to completely and finally decide all matters in issue in an arbitration must be included as a party in the arbitration.

Example

If both a principal and a contractor, or more than 1 employer, may be liable in relation to the compensable injury, each of them must be included as a respondent.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The court may require a person to be included as a party.

Example

If, for an application on behalf of dependants of a deceased worker, a dependant fails to join in the application, the dependant may be included as a respondent.

(3) Each party other than the applicant is a respondent.

(4) The court may decide a claim even if a person is incorrectly included or not included as a party.

3919A Arbitration—determination of Territory or State of connection

(1) This rule applies if the question of whether the ACT is the Territory or State of connection in relation to the employment of a worker arises in an arbitration.

Note Compensation is payable under the *Workers Compensation Act 1951* only if the ACT is the Territory or State of connection (see that Act, pt 4.2A (Employment connection with ACT or State)).

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(2) The party who raises the question must give notice of the question to each person who has an interest in the determination of the question not later than 14 days after the day the question arises in the proceeding.

Note An employer may be separately represented for each insurer of the employer on risk in relation to the claim (including a default insurer of a Territory or State of connection) (see r 3925).

(3) In this rule:

Territory or State of connection—see the *Workers Compensation Act 1951*, section 36A.

3920 Arbitration—including other parties

(1) An applicant may include someone else as a party to an arbitration by naming the person in the application.

(2) A respondent may include someone else as a party to an arbitration (a ***third-party respondent***) by filing a third-party notice.

Example

If a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease, a respondent employer claiming to be entitled to contribution from another employer may include the other employer as a third-party respondent.

Note 1 See approved form 3.61 (Arbitration—third-party notice) AF2006-498.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) A party including a person as a third-party respondent must, not later than 14 days after the day the party files the notice—

(a) serve a sealed copy of the notice, the application for arbitration and any answer filed in the arbitration, on the person; and

(b) serve a sealed copy of the notice on each other party to the arbitration.

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(4) The court may, at any time, order a party who has included a person as a party in an arbitration to—

(a) serve on the person any document in the arbitration; or

(b) file and serve on the person and each other party an affidavit setting out the basis on which the person has been included.

3921 Arbitration—person may apply to be included as party

A person may apply to the court to be included as a party to an arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3922 Arbitration—party may apply to be removed as party

A party to an arbitration may apply to the court to be removed as a party.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3923 Arbitration—employer not respondent in certain applications by dependant or personal representative

(1) This rule applies if—

(a) a dependant, or the personal representative, of a deceased worker asks that a claim be decided by arbitration; and

(b) the amount of compensation payable to the dependants of the deceased worker is not an issue in the arbitration.

(2) The employer is not a respondent in the arbitration if the employer has paid the amount of compensation—

(a) to the applicant; or

(b) into court to be dealt with as the court directs.

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Division 3.13.4 Workers compensation—representation in arbitrations

3924 Arbitration—party may be represented

(1) A party to an arbitration may be represented by—

(a) a lawyer; or

(b) with leave of the court—

(i) if the party is an injured worker—a member of the party's family; or

(ii) an employee of the party; or

(iii) if the party is a corporation—a director or officer of the corporation; or

(iv) if the party is a member of an organisation—an officer or member of the organisation; or

(v) in special circumstances, anyone else.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) A person who represents a party with the court's leave must file in the court an authority to act signed by the party.

(3) The court may allow a person other than a lawyer to claim travelling expenses for representing a party in an arbitration.

Note A lawyer representing a party may claim costs and reasonable disbursements, see r 3968 (Workers compensation costs—generally).

(4) Also, the court may allow a worker, or a member of the worker's family who represents the worker, an allowance for time spent at the arbitration.

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3925 Arbitration—separate representation of employer for insurer's period on risk

(1) An employer who is a party to an arbitration in relation to a claim may be separately represented in the arbitration for each insurer on risk in relation to the claim.

Note An insurer on risk may be the default insurer of the ACT, a State or another Territory.

(2) This part applies to the employer as if, for each separate representation, the employer were a separate party.

(3) An answer filed under rule 3913 (Application for arbitration—answer by respondent or third-party respondent) in relation to the separate representation must state the risk to which the answer relates.

Division 3.13.6 Workers compensation—medical reports for arbitrations

3928 Arbitration—service of medical reports

(1) Each party to an arbitration must, not later than 28 days before the hearing date for the arbitration, serve on each other party to the arbitration a copy of all medical reports then available to the party—

(a) on which the party intends to rely at the arbitration; or

(b) obtained from a doctor whom the party intends to call at the arbitration.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.

(2) If a party serves a medical report from a doctor, the party must serve every medical report from that doctor obtained by the party.

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(3) If, after serving a medical report under subrule (1), a party obtains a further report from the same doctor, the party—

(a) must serve the further report not later than 3 days after the day the party obtains the report; or

(b) must not serve the report and tell the other parties that the party does not intend to rely on the reports of that doctor already served.

(4) A doctor's report must not be tendered, and is not admissible, in the arbitration unless it has been served in accordance with this rule, except with—

(a) the court's leave; or

(b) the agreement of all parties to the arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(5) This rule applies subject to any order of the court.

3929 Arbitration—supplementary medical reports

(1) If a doctor changes in a material way an opinion in a medical report that has been served, the doctor must provide a supplementary medical report (a ***supplementary report***) to the party who engaged the doctor (the ***engaging party***) stating the change and the reason for it.

(2) The doctor may provide the engaging party with other supplementary reports (also a ***supplementary report***).

(3) If a doctor provides a supplementary report under this rule, the engaging party, and any other party having the same interest as the engaging party, must not use an earlier medical report (including an earlier supplementary report) on an issue to which the earlier medical report relates unless the engaging party has served a copy of the supplementary report on all active parties in the proceeding on whom the engaging party served the earlier medical report.

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3930 Arbitration—doctor's evidence to be covered by medical report

Except with the court's leave or as otherwise agreed by all the parties to an arbitration, the oral evidence in chief of a doctor is not admissible unless the doctor's medical report served in accordance with rule 3928 (Arbitration—service of medical reports) contains the substance of the matters sought to be adduced in evidence.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

3931 Arbitration—medical reports admissible as evidence of opinion etc

A medical report served under rule 3928 is admissible as evidence of—

(a) the author's opinion; and

(b) if the author's direct oral evidence of a fact on which the opinion was formed would be admissible as evidence of that fact without further evidence (whether oral or otherwise)—that fact.

3932 Arbitration—requiring attendance of doctor for cross-examination etc

(1) This rule applies if a medical report is served under rule 3928 by a party to an arbitration.

(2) Another party to the arbitration may, by notice served on the party who served the medical report, require the doctor who prepared the report to be available during the arbitration to be cross-examined on the report.

(3) The notice must be served not later than 14 days after the day the report is served on the other party.

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3933 Arbitration—tender of medical report

(1) A party to an arbitration who is served with a medical report under rule 3928 may tender the report.

(2) If the doctor who prepared the report is required under rule 3932 to be available during the arbitration, the report must not be tendered or otherwise used in the proceeding by any party unless—

(a) the doctor is available as required to be cross-examined on the report; or

(b) the doctor has died; or

(c) the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) If the doctor is cross-examined on the report, the party using the report may re-examine the doctor.

Division 3.13.7 Workers compensation—medical referees for arbitrations

3934 Arbitration—party may apply for medical referee etc

(1) The court may, on application by a party to an arbitration or on its own initiative, ask a medical referee to—

(a) help the court to assess a medical matter during an arbitration; or

(b) report on a medical matter during, or arising from, the arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application under this subrule.

(2) An application must set out the reasons for the application.

Note Rule 6008 (Application in proceeding—filing and service) deals with service of the application.

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3935 Arbitration—number of medical referees

(1) The same medical referee must help the court throughout an arbitration.

(2) However, another medical referee may help the court if the medical referee is unavailable for any reason.

3936 Arbitration—notice of request to medical referee

If the court, on the application of a party to an arbitration or its own initiative, decides to ask a medical referee to help the court assess, or to report on, a medical matter in an arbitration, the registrar must tell each party, in writing, about the decision.

3937 Arbitration—assessment of worker by medical referee

(1) If a medical referee is to do a medical assessment of an injured worker for an arbitration, the court may order the worker to undergo the assessment.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

Note 2 The *Workers Compensation Regulation 2002*, div 3.1 deals with how a medical assessment must be done.

(2) If an order is made under this rule, the registrar must tell each other party to the arbitration, in writing, about the order.

3938 Arbitration—medical referee to review medical evidence etc

(1) This rule applies if a medical referee is asked under rule 3934 (Arbitration—party may apply for medical referee etc) to help the court assess, or report on, a medical matter in an arbitration.

(2) The medical referee must—

(a) review the medical evidence about the injured worker; and

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(b) review any relevant approved medical guidelines or clinically relevant research about the worker's injury; and

(c) apply the referee's clinical expertise to the review under paragraphs (a) and (b); and

(d) do a medical assessment of the worker, unless the referee considers it unnecessary.

(3) In this rule:

approved medical guidelines—see the *Workers Compensation Regulation 2002*, dictionary.

clinically relevant research—see the *Workers Compensation Regulation 2002*, section 6.

medical evidence—see the *Workers Compensation Regulation 2002*, dictionary.

3939 Arbitration—medical referee's report

(1) A medical referee's report for an arbitration must state—

(a) the results of the referee's assessment of the cause or diagnosis of, or the prognosis or recommended medical treatment for, the worker's injury; and

(b) if the referee's assessment differs from the medical evidence about the worker's injury—

(i) how the assessment differs and why; and

(ii) why the referee's assessment is preferable; and

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(c) if the referee considered it unnecessary to assess the worker—why the referee did not consider it necessary.

Example of why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

3940 Arbitration—medical referee's report to be given to parties

If a medical referee prepares a report for an arbitration, the registrar must give a copy of the report to each party to the arbitration.

3941 Arbitration—court may decide claim without medical referee report

This division does not prevent the court from deciding a claim without the help of, or a report from, a medical referee.

Division 3.13.8 Workers compensation—dispute resolution conference for arbitration

3942 Meaning of *dispute resolution conference*—div 3.13.8

For this division, a ***dispute resolution conference*** means a meeting between the parties to an application for arbitration set down under rule 3945 (Dispute resolution conference—listings etc).

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3943 Dispute resolution conference—purpose

(1) The purpose of a dispute resolution conference is to enable parties to an application for arbitration, with the assistance of a conciliator, to—

(a) settle any issue in dispute; and

(b) settle the amount of compensation payable or the basis upon which compensation is payable; and

(c) if settlement of the claim is not reached—narrow the issues in dispute and, as far as practicable, agree on the future progress of the application.

(2) Parties attending a dispute resolution conference must, during the conference, make a genuine effort to settle the claim.

3944 Conciliator for dispute resolution conference—div 3.13.8

(1) For this division, the registrar is a ***conciliator*** for dispute resolution conferences.

(2) The court may appoint another person as a conciliator.

(3) The conciliator for a dispute resolution conference has an advisory, but not determinative, role for the conference and may advise parties to an application for arbitration about terms of settlement and encourage them to reach agreement.

3945 Dispute resolution conference—listings etc

(1) Each application for arbitration must be listed for a dispute resolution conference.

(2) However, if the court considers it appropriate, the court may make any of the following orders:

(a) an order dispensing with the requirement to hold a dispute resolution conference;

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(b) an order excusing a party from attending a dispute resolution conference;

(c) any other order about a dispute resolution conference.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) In making an order, the court must take into account—

(a) the extent to which the parties have complied with their obligations under the *Workers Compensation Act 1951*; and

(b) whether information required for the conference has been made available by each party to the application to all other parties; and

(c) the likelihood of the dispute being settled at the conference.

3946 Dispute resolution conference—requirement to attend

(1) Unless the court otherwise orders, the injured worker or, for a claim by a dependant, the dependant or personal representative of the dependent, must attend the dispute resolution conference.

(2) If the injured worker or dependant is represented, the representative must also attend the dispute resolution conference.

(3) Each other party must be represented at the dispute resolution conference.

(4) A party's representative at the dispute resolution conference must—

(a) have authority to negotiate a settlement on behalf of the party; or

(b) be able to obtain instructions to negotiate a settlement on behalf of the party during the conference.

(5) This rule does not prevent the court from directing a party to attend the dispute resolution conference.

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3947 Dispute resolution conference—time

The dispute resolution conference must be listed for a time—

(a) if an answer to an application has been filed by the respondent or third-party respondent—not later than 3 months after the day the answer was filed; or

(b) if 3 months has passed since the day the application was filed and no action has been taken by any party to the application—not later than 1 month after the 3 months has passed.

3948 Dispute resolution conference—information to be provided before conference

A party to an application for arbitration must, not later than 5 days before the time for which the dispute resolution conference is listed, give the court and each other party to the application the following:

(a) a statement of issues;

(b) a summary of the evidence on which the party intends to rely at the arbitration;

(c) if the party intends to rely on expert evidence at the arbitration but the party has not yet obtained that evidence—details of what arrangements have been made by the party to obtain the evidence.

3948A Dispute resolution conference—confidentiality

(1) The parties and the conciliator must not disclose to anyone not involved in the dispute resolution conference any information or document produced during the conference, unless required by law to make the disclosure.

(2) Any information disclosed to the conciliator by a party in private must be treated by the conciliator as confidential, unless the party making the disclosure expressly states otherwise.

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3948B Dispute resolution conference—settlement must be in writing

If the parties to an application for arbitration settle the claim at a dispute resolution conference, the agreement must be recorded in writing.

3948C Dispute resolution conference—court orders on outcome of conference

(1) If the parties to an application for arbitration do not settle the claim at a dispute resolution conference, the court may—

(a) if the court considers there are reasonable prospects that the claim may be settled at a further dispute resolution conference—

(i) direct the parties to attend a further dispute resolution conference; and

(ii) make directions as required; and

(b) if the court considers there is no reasonable prospect that the claim may be settled at a further dispute resolution conference—make directions for the conduct of the arbitration.

(2) In making a direction for subsection (1) (b), the court must try to facilitate—

(a) hearing the claim as quickly as practicable; and

(b) keeping costs as low as practicable.

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(3) Without limiting subsection (1) (b), the court may make directions about any of the following:

(a) obtaining, filing or serving further material, including evidence by affidavit;

(b) any special requirements in relation to evidence;

Example

use of telephone or audio visual facilities for evidence

Note An example is part of the rule, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(c) any requirement for parties to file and serve a statement of facts, issues and contentions before the hearing.

Division 3.13.9 Workers compensation—conduct of arbitration

3949 Conduct of arbitration—date

The registrar must—

(a) set a date for an arbitration in accordance with the directions (if any) of the court; and

(b) tell the parties the date set.

3950 Conduct of arbitration—burden of proof on party asserting fact

The burden of proof of a fact that is not admitted in an arbitration is the same whether the applicant is an employer or insurer, an injured worker, or a dependant, or personal representative, of a deceased worker.

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3951 Conduct of arbitration—directions about third-party respondents

(1) A party may apply for directions about the procedure to decide a question between a respondent and a third-party respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(2) The court may give the directions it considers appropriate.

(3) Without limiting subrule (2), the court may—

(a) give the third-party respondent leave to answer the applicant's claim against the respondent; or

(b) give directions about the extent to which the third-party respondent is to be liable to or be bound by an award in the arbitration.

(4) This rule does not affect an applicant's claim against a respondent.

3952 Conduct of arbitration—directions and orders if remedy against employer and stranger

(1) This rule applies to an arbitration if—

(a) the injury to the applicant worker happened in circumstances mentioned in the Workers Compensation Act, section 183 (Remedies against employer and stranger); and

(b) a respondent to the application claims that, if compensation is paid under the Workers Compensation Act to the applicant, the respondent is entitled to be indemnified by a person under that section.

(2) The respondent may file a notice of claim naming the person.

(3) The respondent must serve a sealed copy of the notice on the person.

Note The copy of the notice must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

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(4) If this rule applies, the court may make the orders it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) Without limiting subrule (4), the court may give the person leave to answer the applicant's claim against the respondent.

(6) If the person wishes to dispute the notice, the person may appear at the arbitration.

(7) Without limiting subrule (4), the court may, under the subrule, order that the person is not entitled in any future proceeding between the respondent and the person to dispute the validity of the award of the court on the arbitration.

(8) If the person does not appear at the arbitration, the person is taken to admit the validity of the award of the court on the arbitration.

(9) With the consent of the respondent and the person, the court may, under subrule (4)—

(a) if the person's liability to indemnify the respondent is admitted—make an order for the respondent against the person, to be enforced only after payment is made by the respondent under the award; or

(b) order that the question of the person's liability to indemnify the respondent be settled by arbitration between the respondent and the person (the ***later arbitration***) after the arbitration between the applicant and the respondent.

(10) If the court makes an order mentioned in subrule (9) (b), the court may make the orders it considers appropriate in relation to the later arbitration.

(11) Without limiting subrules (4) and (10), the court may make any order it considers appropriate about costs between the respondent and the person in the arbitration or the later arbitration.

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3953 Conduct of arbitration—directions generally

(1) The court may, at any stage of a proceeding, give any direction about the conduct of the proceeding it considers appropriate, even though the direction may be inconsistent with another provision of these rules.

(2) The court may give a direction about the conduct of the proceeding on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(3) In deciding whether to give a direction under this rule, the interests of justice are paramount.

(4) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.

(5) The court may at any time amend or revoke a direction made under this rule.

(6) The court may amend or revoke a direction made under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction.

(7) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

Division 3.13.10 Workers compensation—submission to award and payments into court

3954 Arbitration—payment into court generally

If a party to an arbitration pays an amount of compensation into court, the registrar must tell each other party to the arbitration, in writing, about the payment.

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3955 Arbitration—admission of liability to claim by worker

(1) This rule applies to the arbitration of a claim if the application is by a worker.

(2) An employer may, before the day set for the arbitration, act under subrule (3) or (4).

(3) The employer may file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of the amount of weekly compensation stated in the notice.

Note See approved form 3.64 (Notice by respondent admitting liability or paying money into court) AF2006-501.

(4) The employer may—

(a) file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of a lump sum amount of compensation stated in the notice that is sufficient to cover the employer's liability on the claim; and

(b) pay the amount into court.

(5) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3956 Arbitration—admission of liability to claim for deceased worker

(1) This rule applies to the arbitration of a claim if the application is by a dependant, or the personal representative, of a deceased worker.

(2) An employer may, before the day set for the arbitration—

(a) file in the court a notice stating that the employer admits liability; and

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(b) pay into court an amount sufficient to cover the employer's liability on the claim.

Note See approved form 3.65 (Notice by respondent admitting liability or paying money into court (deceased worker)) AF2006-502.

(3) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3957 Arbitration—denial and submission to award or payment by employer

(1) An employer who is a party to an arbitration may, before the day set for the arbitration—

(a) file in the court a notice stating that—

(i) the employer does not admit liability on the claim; or

(ii) the employer submits to an award of the court for the payment of the amount of weekly compensation stated in the notice but does not admit liability on the claim; and

(b) pay into court—

(i) an amount sufficient to cover the liability the employer would have on the claim if the employer did not deny liability; or

(ii) the amount stated in the notice.

Note See

- approved form 3.64 (Notice by respondent admitting liability or paying money into court) AF2006-501
- approved form 3.65 (Notice by respondent admitting liability or paying money into court (deceased worker)) AF2006-502.

(2) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

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3958 Arbitration—acceptance of payment by worker

(1) This rule applies if a notice is filed under rule 3955 (Arbitration—admission of liability to claim by worker) in relation to a claim by a worker.

(2) The worker may accept the amount of compensation in satisfaction of the worker's claim by giving written notice of the acceptance to the employer and registrar.

(3) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3955.

3959 Arbitration—acceptance of payment for deceased worker

(1) This rule applies if an employer files a notice under rule 3956 (Arbitration—admission of liability to claim for deceased worker) in relation to a claim made by a dependant, or the personal representative, of a deceased worker.

(2) The applicant dependant or personal representative may accept the amount of compensation in satisfaction of the claim by giving written notice of the acceptance to the employer, registrar and any other party.

(3) If a respondent other than the employer is willing to accept the amount of compensation in satisfaction of the claim, the respondent may accept the amount of compensation in the same way as the applicant dependant or personal representative.

(4) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3956.

3960 Arbitration—payment on worker's acceptance

(1) This rule applies if a worker accepts payment of an amount under rule 3958 (Arbitration—acceptance of payment by worker).

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(2) The court may order payment of the amount to the worker or the application of the amount for the worker's benefit.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may order the employer to pay any costs of the worker properly incurred before the worker receives the notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance.

3961 Arbitration—payment on dependant's etc acceptance

(1) This rule applies if an applicant dependant or personal representative and each respondent other than the employer (the ***other parties***) accept payment of an amount under rule 3959 (Arbitration—acceptance of payment for deceased worker).

(2) Further proceedings against the employer are stayed and—

(a) if the other parties agree about the apportionment and application of the amount—the court may make an award for the apportionment and application of the amount; or

(b) in any other case—the arbitration may proceed as between the other parties.

(3) The court may order the employer to pay any costs of another party properly incurred before the party receives notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

3962 Arbitration—no prompt acceptance of submission or payment

(1) This rule applies if a party given a notice under rule 3955, rule 3956 or rule 3957 does not accept the amount of compensation mentioned in the notice within a reasonable time after receiving the notice.

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(2) The party may accept the amount at any time before the arbitration starts.

(3) However, if the party accepts the amount, the party is liable to pay the costs the court is satisfied were reasonably incurred by the employer after the day the employer filed the notice or made the payment into court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(4) The court may order that the costs payable by a party under subrule (3) be set off against any costs payable to the party, or be deducted from any amount awarded to the party.

3963 Arbitration—award not greater than submission or payment

(1) This rule applies if—

(a) an employer to an arbitration has submitted to an award, or paid an amount into court, and given notice under rule 3955, rule 3956 or rule 3957; and

(b) the award on arbitration is not more than the amount submitted to or paid.

(2) The employer is not liable to pay the costs of a party in whose favour the submission or payment is made that were incurred by the party after the party received notice about the submission or payment.

(3) The court may—

(a) order that any costs incurred by the employer after giving notice under rule 3955, rule 3956 or rule 3957 be paid by any party who has not accepted the amount submitted to or paid; and

(b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

(4) The court may also—

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(a) order that any costs incurred by a party who accepted the amount submitted to or paid after receiving the notice be paid by any other party who has not accepted the amount; and

(b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

Division 3.13.11 Workers compensation—awards

3964 Arbitration—award

(1) If the court makes findings in support of an award in favour of a party on an arbitration, the party must prepare draft terms of the award for making by the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(2) The party preparing draft terms of the award must, not later than 7 days after the day the court makes the findings, give a copy of the draft terms to each other party to the arbitration.

(3) Each other party to the arbitration must, not later than 7 days after the day the party receives a copy of the draft terms—

(a) endorse the party's agreement on the draft terms; or

(b) object to the draft terms.

(4) If the draft terms of the award are agreed, the draft terms must be given to the registrar for making by the court.

(5) A party objecting to the terms must ask the registrar to list the matter before the court.

Note The party must, as soon as possible, ask the registrar to list the matter (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(6) After the award is made by the court, the registrar must serve a sealed copy of the award on each party to the arbitration.

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(7) The court may at any time correct a clerical error in an award made on an arbitration.

3965 Arbitration—setting aside or amending award

(1) The court may, by order, set aside or amend an award made on arbitration if satisfied that—

(a) the award was obtained by fraud or other improper means; or

(b) a person included in the award as a dependant is not a dependant; or

(c) a person who is a dependant is not included in the award.

Note Pt 6.2 (Applications is proceedings) applies to an application for an order, directions or leave under this rule.

(2) The court may give directions it considers appropriate about the conduct of a proceeding to set aside or amend an award.

(3) The court may give the directions under subrule (2) on application by a party or on its own initiative.

(4) In setting aside or amending an award, the court may make any order it considers just.

(5) An application to set aside or amend an award must not be made more than 6 months after the date of the award without the court's leave.

(6) The court may give leave only if the failure to make the application not later than 6 months after the date of the award was because of mistake, absence of the party from the ACT, or other reasonable grounds.

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Division 3.13.12 Workers compensation—registered agreements

3966 Registered agreement—application for registration

(1) This rule applies to an agreement under the Workers Compensation Act, part 4.7 (Registration of agreements for compensation).

(2) A person who is a party to the agreement may apply to the court for registration of the agreement by filing a copy of the agreement in the court.

Note 1 See approved form 3.66 (Application for registration of agreement for compensation) AF2007-71.

Note 2 The Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).

(3) If the person is also a party to an arbitration about the matter in the agreement, the party may apply to the court for registration of the agreement by filing a copy of the agreement or handing it to the court at the arbitration.

(4) The copy of the agreement filed or handed to the court must—

(a) be signed by the injured worker, the injured worker's representative and each other party or the party's representative; and

(b) include a statement by a lawyer that the lawyer—

(i) has provided independent legal advice about the agreement to the injured worker; and

(ii) based on the lawyer's experience in worker's compensation proceedings and knowledge of the injured worker's claim, considers that the amount of compensation set out in the agreement is not manifestly inadequate.

(5) Part 6.2 (Applications in proceedings) does not apply to the application to register the agreement.

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(6) Unless the court otherwise orders on its own initiative, the application to register must be dealt with without a hearing and in the absence of the parties.

(7) However, at any time before registering an agreement, the court may require a party to provide additional information.

(8) If the court registers the agreement, the registrar must give a sealed copy of the registered agreement, endorsed with the date of registration, to—

(a) each party to the agreement; and

(b) if applicable, any party to the arbitration who is not a party to the agreement.

3967 Registered agreement—application for amendment or cancellation

(1) A party to a registered agreement may apply to the court to amend or cancel the agreement under the Workers Compensation Act, section 81 (Cancellation or amendment of registered agreements) by filing an application in the court.

Note Pt 6.2 (Applications is proceedings) applies to an application under this rule.

(2) The court may give the directions it considers appropriate about the conduct of the proceeding.

(3) The court may give directions under subrule (2) on application by a party or on its own initiative.

Division 3.13.13 Workers compensation—costs

3968 Workers compensation costs—generally

(1) The successful party to an arbitration or related proceeding is entitled to be paid party and party costs (including reasonable disbursements) by the unsuccessful party, unless the court otherwise orders.

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(2) The court may make any order about costs between a third-party respondent and another party to an arbitration the court considers appropriate.

(3) However, the court must not award the costs of, or incidental to, an arbitration or related proceeding (including reasonable disbursements) against someone claiming compensation honestly in the arbitration or proceeding.

(4) The costs of, and incidental to, an arbitration or related proceeding are payable at 2/3 of the prescribed scale of costs, unless the court otherwise orders.

(5) Disbursements are payable in full.

(6) This rule is subject to rule 3962 (Arbitration—no prompt acceptance of submission or payment) and rule 3963 (Arbitration—award not greater than submission or payment).

3969 Workers compensation costs—claim against arbitration award

(1) This rule applies if a worker is paid an amount of compensation on arbitration.

(2) The worker's lawyer or the lawyer's agent may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the court awards the lawyer or agent the costs.

(3) Costs to be awarded to the lawyer or the lawyer's agent are payable at 2/3 of the prescribed scale of costs, unless the court otherwise orders.

(4) Part 2.17 (Costs) applies in relation to costs awarded to a worker's lawyer or the lawyer's agent under this rule as if the lawyer or lawyer's agent were a party to the proceeding entitled to costs.

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Division 3.13.14 Workers compensation—appeals

3970 Appeal—order of Supreme Court

(1) This rule applies if an order is made by the Supreme Court on an appeal from a decision or award of the Magistrates Court in an arbitration.

(2) A party may file a sealed copy of the order in the Magistrates Court.

Note The Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).

(3) If the order has effect as a decision or award in favour of a party, the decision or award must be recorded by the registrar of the Magistrates Court as if it were a decision or award of that court.

(4) If the order requires an award be made in favour of a party, the Magistrates Court must make the award.

(5) If the judgment directs a re-hearing or further hearing of the arbitration, the registrar of the Magistrates Court must—

(a) set a date for directions; and

(b) tell the parties the date for directions.

(6) The Magistrates Court must make any other direction, decision or award that is necessary to give effect to the order.

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Chapter 4 Criminal proceedings

Part 4.1 Criminal proceedings—general

Division 4.1.1 Criminal proceedings—application of ch 2

4000 Criminal proceedings—application of expert witness code of conduct

Division 2.12.1 (Expert evidence generally) applies to a criminal proceeding as if—

(a) a reference to a ***proceeding*** were a reference to a criminal proceeding; and

(b) a reference to an ***active party*** were a reference to each party to the proceeding; and

(c) any other necessary changes were made.

Division 4.1.2 Criminal proceedings—service

4005 Meaning of *accused person* for div 4.1.2—bail applications

In this division:

accused person includes—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—a person who is an accused person for that division; and

(b) for any other application in relation to bail—a convicted person.

Note See also r 4700, def ***accused person***.

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4006 Criminal proceedings—application of pt 6.8

The following rules do not apply to a criminal proceeding:

(a) rule 6412 (Service of originating process by post—Magistrates Court);

(b) rule 6413 (Doubtful service—Magistrates Court);

(c) rule 6421 (Service by filing);

(d) division 6.8.5 (Service—particular cases);

(e) rule 6460 (Substituted service);

(f) rule 6461 (Informal service);

(g) rule 6462 (Service on agent);

(h) rule 6463 (Service under contract);

(i) division 6.8.9 (Service out of Australia);

(j) division 6.8.11 (Service of foreign legal process in the ACT);

(k) division 6.8.12 (Service under the Hague Convention).

4007 Criminal proceedings—service on accused person by filing if no address for service

(1) This rule applies if an accused person in a criminal proceeding—

(a) is not in custody; and

(b) is not represented by a solicitor.

(2) If the accused person does not have an address for service, a document for which personal service is not necessary may be served on the person by—

(a) filing it; and

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(b) sending a copy by prepaid post addressed to the accused person at the person's last-known address.

Note ***Address for service*** is defined in the dictionary.

(3) A document filed under subrule (2) (a) must have endorsed on its first page a statement that it is filed under this rule.

4008 Criminal proceedings—service if no-one found at accused person's address for service

(1) This rule applies if—

(a) an accused person in a criminal proceeding—

(i) is not in custody; and

(ii) is not represented by a solicitor; and

(iii) has an address for service; and

(b) no-one can be found at the address.

(2) Any document in the proceeding (including a document for which personal service is otherwise necessary) may be served on the accused person by leaving a copy at the person's address for service.

Note ***Address for service*** is defined in the dictionary.

4009 Criminal proceedings—service of documents when unrepresented accused person in custody

(1) This rule applies if an accused person in a criminal proceeding—

(a) is in custody; and

(b) is not represented by a solicitor.

(2) A document required or allowed to be served by the accused person for the proceeding may be served on the registrar for service by the registrar on another party to the proceeding.

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(3) A document required or allowed to be served on the accused person for the proceeding may be served by leaving the document with the person in charge of the place where the person is in custody.

(4) If a document mentioned in subrule (3) is served by the registrar, the document may be served—

(a) by sending a copy by prepaid post to the place where the accused person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

Note ***Prepaid post*** is defined in the dictionary.

Division 4.1.3 Criminal proceedings—enforcement

4020 Criminal proceedings—failure of individual to comply with subpoena etc

(1) This rule applies if an individual fails to comply with—

(a) a subpoena; or

(b) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner or anyone else who has authority to take evidence for the court.

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(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of the individual; and

(b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.

(4) This rule does not limit any other power of the court.

Note Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

4021 Criminal proceedings—failure of corporation to comply with subpoena etc

(1) This rule applies if a corporation fails to comply with—

(a) a subpoena; or

(b) an order requiring attendance to give evidence or produce a document or thing before—

(i) the court; or

(ii) an officer, examiner or anyone else who has authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of a named senior officer of the corporation; and

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(b) the production of the senior officer as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the senior officer until released by the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

(4) This rule does not limit any other power of the court.

Note Failure to attend or to produce a document or other thing in a legal proceeding may be an offence (see Criminal Code, s 719 and s 720).

Division 4.1.4 Criminal proceedings—other provisions

4050 Criminal proceedings—production of person in custody

(1) The court may make the following orders:

(a) an order requiring the production of a person who is in custody;

(b) an order about the continuing custody of a person who is in custody.

Note See approved form 4.1 (Order for production of person in custody) A2006-375.

(2) The court may order that the person in custody be produced—

(a) in person; or

(b) by audiovisual link or audio link.

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(3) An order under this rule may be made on the application of a party or on the court's initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

4051 Criminal proceedings—defence response to prosecutor's opening address

If an accused person, or the person's counsel, makes an opening response to the prosecutor's opening address in a trial, the response—

(a) must identify the acts, facts, matters and circumstances with which issue is taken in the prosecutor's opening address and the basis on which issue is taken; and

(b) must not state facts that cannot be supported by evidence to be presented, or that has been presented, at the trial.

4052 Criminal proceedings—execution of documents

The registrar or a justice of the peace may witness any document required or allowed to be entered into under an order, decision or other sentence (however described) of the court in a criminal proceeding.

4053 Criminal proceedings—inspection of registry files

(1) Anyone may search the registry for, inspect, or take a copy of, any document filed in the registry in a criminal proceeding.

Note A fee may be determined under the *Court Procedures Act 2004* for this provision.

(2) However, the registrar must not allow a person who is not a party to a proceeding to search the registry for, inspect, or take a copy of, any of the following documents about the proceeding unless the person

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appears to the registrar to have a sufficient interest in the document or the court gives leave:

(a) an order, transcript of the proceeding, or any other document, that the court has ordered to be kept confidential;

(b) an affidavit that has not been read in court;

(c) a part of an affidavit ruled to be inadmissible in evidence;

(d) an admission that has not been admitted into evidence;

(e) a subpoena;

Note Rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) deals with the inspection of documents produced in response to a subpoena.

(f) a deposition taken before an examiner;

(g) a document filed in support of an application made in the absence of a party;

(h) a written submission that has not been read in court;

(i) an unsworn statement of evidence;

(j) an indictment on which the accused has not yet been arraigned;

(k) a case statement filed by the prosecution until read in court;

(l) a questionnaire completed by the parties;

(m) a document that the registrar decides should be confidential to the parties to the proceeding in the interests of justice.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(3) Also, a party to a proceeding may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

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(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

(5) Further, a party to a proceeding may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production.

(6) Before considering an application for leave under subrule (2), the court may require the applicant for leave to do either or both of the following:

(a) give notice of the application for leave to a party to the relevant proceeding or another interested person;

(b) obtain the agreement of a party to the relevant proceeding or another interested person to the applicant searching the registry for, inspecting, or taking a copy of, a document to which the application relates.

(7) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

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4054 Criminal proceedings—certificate of conviction

(1) For a criminal proceeding, the registrar may issue a certificate of conviction.

(2) In this rule:

conviction, for a person who has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment, means—

(a) a conviction recorded by the court for the person; or

(b) a finding of guilt recorded by the court for the person.

4055 Criminal proceedings—preparation of judgments

(1) In this rule:

judgment means sentence or other order.

(2) At any time after a judgment has been given in a criminal proceeding, a party may give a draft of the judgment to the registrar.

Note See

- approved form 4.2 (General form of order—criminal proceeding) AF2006-376
- approved form 4.3 (General form of judgment—criminal proceeding) AF2006-377.

(3) If an appeal is made from the judgment, or an application is made in relation to the judgment, the appellant or applicant must give a draft of the judgment to the registrar, unless the judgment has been already entered.

(4) The registrar—

(a) may approve a draft of the judgment given to the registrar, with or without amendment; and

(b) must, on the filing of the engrossed judgment with the approved draft, enter the judgment.

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Part 4.2 Magistrates Court criminal proceedings

Division 4.2.1 Magistrates Court criminal proceedings—preliminary

4300 Definitions—pt 4.2

In this part:

conviction includes a finding of guilt recorded by the court for a person.

defendant means a person against whom an information is laid.

order includes a conviction or sentence.

4301 Application—pt 4.2

This part applies to a criminal proceeding in the Magistrates Court.

Division 4.2.1A Magistrates Court criminal proceedings—prosecution evidence in committal proceedings

4305 Prosecution evidence to be given to accused etc—Magistrates Court Act, s 90

(1) For the *Magistrates Court Act 1930*, section 90 (2), the period within which the informant must serve the documents on the accused person before the date set for the committal hearing is—

(a) 28 days; or

(b) if the court orders another period—the period ordered.

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(2) For the *Magistrates Court Act 1930*, section 90 (3), the period within which a copy of the documents mentioned in subrule (1) must be filed in the court is—

(a) 28 days; or

(b) if the court orders another period—the period ordered.

Division 4.2.2 Magistrates Court criminal proceedings—setting aside orders

4310 Magistrates Court order made in absence of party may be set aside—general

(1) This rule applies if a party does not appear in a criminal proceeding and an order is made.

(2) However, this rule does not apply if the defendant—

(a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and

(b) did not withdraw the plea before the order was made; and

(c) did not appear in the proceeding.

(3) On application by the party who did not appear, the court may set aside the order.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4311 Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence

(1) This rule applies to an order made against a defendant in the defendant's absence if—

(a) the defendant was served with a summons under the *Magistrates Court Act 1930*, section 116B (Service of summons for prescribed offence); and

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(b) any of the following subparagraphs apply:

(i) the defendant did not return the notice of intention to defend form or the plea of guilty form to the registrar before the day when the defendant was required by the summons to appear before the court;

(ii) the court has previously, in the absence of the defendant, adjourned the hearing under the *Magistrates Court Act 1930*, section 116E (3) (Procedure if plea of guilty entered), and the court is satisfied that a notice under that subsection did not come to the defendant's attention before the conviction was recorded or the order made;

(iii) the court is satisfied that a notice mentioned in the *Magistrates Court Act 1930*, section 116F (Procedure if notice of intention to defend given) or section 116H (Restricted penalties under pt 3.7) did not come to the defendant's attention before the date set under the section for the hearing of the proceeding.

(2) On the application of the defendant, the court must set aside the order.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4312 Magistrates Court order made in absence of party may be set aside—other offences

(1) This rule applies to an order made in the absence of a party if rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence) does not apply to the order.

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(2) On application by the party, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

4313 Magistrates Court conviction made in absence of party set aside—warrant may be set aside

(1) This rule applies if the court sets aside a conviction in a criminal proceeding under any of the following rules:

- rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
- rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence)
- rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).

(2) The court must set aside a warrant issued under the *Magistrates Court Act 1930* because of the conviction, unless the warrant has been executed before the conviction is set aside.

4314 Magistrates Court conviction made in absence of party set aside—hearing

(1) This rule applies if the court has set aside a conviction in a criminal proceeding under any of the following rules:

- rule 4310 (Magistrates Court order made in absence of party may be set aside—general)
- rule 4311 (Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence)
- rule 4312 (Magistrates Court order made in absence of party may be set aside—other offences).

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(2) The court may—

(a) on giving the parties reasonable notice, hear and decide the proceeding; or

(b) adjourn the hearing of the proceeding to a time and place the court considers appropriate.

(3) If the court adjourns the hearing of the proceeding under subrule (2) (a), the court may direct the registrar to tell the parties the date set for the adjourned hearing.

4315 Magistrates Court order made in absence of party may be set aside—application by informant

(1) This rule applies if a defendant does not appear in a criminal proceeding and an order is made against the defendant.

(2) However, this rule does not apply if the defendant—

(a) had entered a plea of guilty under the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence); and

(b) did not withdraw the plea before the order was made; and

(c) did not appear in the proceeding.

(3) On application by the informant, the court may set aside the order on the conditions it considers appropriate.

Example of conditions

payment of costs

Note 1 Pt 6.2 (Applications in proceedings) applies to the application.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) If, under this rule, the court sets aside a conviction, the court must dismiss the information and set aside any warrant issued under the *Magistrates Court Act 1930* because of the conviction.

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Division 4.2.3 Magistrates Court criminal proceedings—witnesses

4330 Magistrates Court witness—informant may request attendance

(1) The informant may, by letter sent by a form of post that requires a signature on receipt, request a person to attend to give evidence as a witness at the hearing of an information.

Note See approved form 4.12 (Request to attend hearing as witness) AF2006-505.

(2) The letter must—

(a) set out the time and place for the hearing; and

(b) be accompanied by an undertaking to attend the hearing to be signed by the person and returned to the informant by the date stated in the undertaking; and

Note See approved form 4.13 (Undertaking to attend as a witness) AF2006-506.

(c) be accompanied by a form to be completed by the person to claim the person's reasonable expenses incurred in attending the hearing.

Note See approved form 4.14 (Claim for expenses by witness) AF2006-507.

4331 Magistrates Court witness—expenses

A person who attends the hearing of a criminal proceeding as a witness is entitled to be paid witness expenses assessed in accordance with schedule 4.

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Part 4.3 Supreme Court criminal proceedings

Division 4.3.1 Supreme Court criminal proceedings—preliminary

4700 Definitions—pt 4.3

In this part:

accused person means a person charged with an indictable offence—

(a) who is committed to the court for trial or sentence; or

(b) for whom an indictment has been filed in the court.

Note For applications in relation to bail, see also def ***accused person*** in the following rules:

- r 4005 (Meaning of ***accused person*** for div 4.1.2—bail applications)
- r 4720 (Meaning of ***accused person*** for div 4.3.3).

appearance date—see rule 4731.

case statement—see rule 4732.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

(a) after the person has been convicted or found guilty; or

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(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)

2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, section 13 (Good behaviour orders)

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

4701 Application—pt 4.3

This part applies to a criminal proceeding in the Supreme Court.

Division 4.3.2 Supreme Court criminal proceedings—representation

4705 Meaning of *criminal proceeding*—div 4.3.2

In this division:

criminal proceeding does not include an application in relation to bail.

Note See also dict, def ***criminal proceeding***.

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4706 Supreme Court criminal proceedings—notice of solicitor acting

(1) If a solicitor begins acting for an accused person in a criminal matter after the matter becomes a criminal proceeding in the court, the solicitor must, as soon as practicable, but not later than 14 days after the day the solicitor begins acting—

(a) file a notice that the solicitor is acting for the accused person; and

Note See approved form 4.4 (Supreme Court criminal proceeding—notice of solicitor acting) AF2006-378.

(b) serve a copy of the notice on—

(i) the director of public prosecutions; and

(ii) any solicitor who was acting for the accused person immediately before the notice was filed.

(2) A notice under subrule (1) must contain an address for service.

(3) If a solicitor acts for 2 or more accused people in the same proceeding and at the same time, the solicitor may file a single notice under subrule (1) that lists all the people the solicitor acts for in the proceeding.

(4) If a solicitor files a notice under subrule (1) in relation to an accused person, the solicitor is taken to act for the accused person until—

(a) another solicitor files a notice under subrule (1) in relation to the accused person; or

(b) the solicitor is given leave to withdraw under rule 4708, and complies with rule 4708 (5).

4707 Supreme Court criminal proceedings—change of solicitor

(1) An accused person may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the person.

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(2) If an accused person appoints another solicitor, the newly appointed solicitor must—

(a) file a notice of the change of solicitor; and

(b) serve a stamped copy of the notice on—

(i) the director of public prosecutions; and

(ii) any solicitor who was acting for the accused person immediately before the notice was filed.

Note See approved form 4.5 (Supreme Court criminal proceeding—notice of change of solicitor) AF2006-379.

(3) The notice must state the accused person's address for service.

(4) The accused person's former solicitor remains the solicitor on the record until the newly appointed solicitor complies with subrule (2).

4708 Supreme Court criminal proceedings—removal of solicitor by court

(1) This rule applies if a solicitor for an accused person on the record in a proceeding loses the capacity to act as a solicitor or cannot be found, but a notice of change of solicitor or notice that the solicitor is no longer acting is not filed.

(2) An accused person may apply to the court for the removal of the solicitor's name from the record.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) On application under subrule (2), the court may order that the solicitor's name be removed from the record.

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4709 Supreme Court criminal proceedings—solicitor removed from roll etc

(1) This rule applies if a solicitor's name is removed from the local roll under the *Legal Profession Act 2006* or a solicitor's local practising certificate under that Act is cancelled or suspended.

(2) If a receiver is appointed under the *Legal Profession Act 2006* for the solicitor's practice, a copy of all processes and other documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.

(3) If a receiver is not appointed, a copy of all processes and other documents to be served on an accused person in a proceeding must be served on the accused person's home or business address until another solicitor is appointed.

4710 Supreme Court criminal proceedings—solicitor's instructions to act for accused person ended

(1) This rule applies to a solicitor if the solicitor's instructions to act for an accused person in a criminal proceeding are ended before the proceeding is finally disposed of in the court.

Note Rule 5537 (Appeals to Court of Appeal—solicitor's instructions to act for convicted person ended) applies to a solicitor if the solicitor's instructions to act for a convicted person who is a party to an application or appeal in the Court of Appeal are ended.

(2) The solicitor must—

(a) file a notice stating that the solicitor is no longer acting for the accused person; and

(b) serve a stamped copy of the notice on each party to the proceeding (including the accused person).

Note See approved form 4.6 (Supreme Court criminal proceeding—notice that solicitor no longer acting) AF2006-380.

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(3) The solicitor must file and serve the notice as soon as practicable, but not later than 14 days after the day the solicitor's instructions are ended.

(4) In this rule:

accused person includes a person who has been convicted of an offence and is awaiting sentence for the offence in the court.

Note See also r 4700, def ***accused person***.

court does not include the Court of Appeal.

4711 Supreme Court criminal proceedings—withdrawal of solicitor

(1) A solicitor may withdraw from acting for an accused person only with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) If the solicitor wants to withdraw from acting for the accused person during the person's trial or sentence hearing, the application may be made orally to the court.

(3) The application must—

(a) state the solicitor making the application; and

(b) state briefly the order sought.

(4) A stamped copy of the application must be served—

(a) on the accused person—

(i) personally; or

(ii) by registered letter addressed to the person's last-known address; or

(iii) if the court orders another way of service—as ordered; and

(b) on the director of public prosecutions.

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(5) If the court gives the solicitor leave to withdraw, the solicitor must—

(a) file a notice of withdrawal; and

(b) serve a stamped copy of the notice on the accused person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a stamped copy of the notice on the director of public prosecutions.

Note See approved form 4.7 (Supreme Court criminal proceeding—notice of withdrawal of solicitor) AF2006-381.

4712 Supreme Court criminal proceedings—handing over depositions

If a solicitor ceases to act for an accused person, the solicitor must, as soon as practicable after ceasing to act, give the depositions (if any) the solicitor has received under the *Magistrates Court Act 1930*, section 108 (Accused person may obtain copies of depositions etc) to—

(a) if the solicitor has received a notice under rule 4706 (Supreme court criminal proceeding—notice of solicitor acting) from another solicitor—the other solicitor; or

(b) if the solicitor has not received a notice under rule 4706—the accused person.

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Division 4.3.3 Supreme Court criminal proceedings—bail

4720 Meaning of *accused person*—div 4.3.3

In this division:

accused person—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—means a person who is an accused person for that division; and

Note ***Accused person*** is defined for that division in the *Bail Act 1992*, dict.

(b) for any other application in relation to bail—includes a convicted person.

Note See also r 4700, def ***accused person***.

4721 Supreme Court bail application in relation to accused person

(1) An application in relation to bail by an accused person must comply with this division.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 See approved form 4.8 (Supreme Court application in relation to bail) AF2011-63.

(2) The application must—

(a) state the accused person's name; and

(b) state briefly the order (or orders) sought.

(3) The application must be supported by an affidavit stating—

(a) the charges (if any) outstanding against the accused person; and

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(b) if the accused person has been committed for sentence or trial to the court—that fact, and the date the person was committed; and

(c) if the accused person has been convicted or found guilty of an offence relevant to the application—that fact, the offence and the date the person was convicted or found guilty; and

(d) if the accused person has been sentenced for an offence relevant to the application—that fact, the sentence and the date the person was sentenced; and

(e) if bail has previously been refused for an offence relevant to the application—the reasons bail was refused; and

(f) the accused person's date of birth; and

(g) whether the accused person has a criminal record; and

(h) if the accused person is in custody—the day the person was placed in custody; and

(i) the day the matter is next listed before a court; and

(j) the informant's name; and

(k) if the *Bail Act 1992*, section 9C (Bail for murder), section 9D (Bail for serious offence committed while charge for another pending or outstanding) or section 9E (Bail for person sentenced to imprisonment) applies in relation to the application—the special or exceptional circumstances that exist favouring the grant of bail; and

(l) if a court has made a decision in relation to an application for bail by the accused person and the application is a further application for bail—

(i) for each previous application for bail—

(A) the name of the judge or magistrate who heard the application; and

(B) the date the application was made; and

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(ii) either—

(A) the change in circumstances relevant to the granting of bail since the last application for bail was made; or

(B) the fresh evidence or information of relevance to the granting of bail that was unavailable when the last application for bail was made; and

Note See the *Bail Act 1992*, s 20C (Repeat application for bail—Supreme Court).

(m) if the application is for review of a decision of an authorised officer in relation to bail—

(i) the change in circumstances relevant to the granting of bail since the officer's decision was made; or

(ii) the fresh evidence or information of relevance to the granting of bail that was unavailable when the officer's decision was made; and

Note See the *Bail Act 1992*, s 43 (Power of Supreme Court to review—decision of authorised officer).

(n) if the application is for review of a decision of a court in relation to bail—

(i) for each previous application for bail—

(A) the name of the judge or magistrate who heard the application; and

(B) the date the application was made; and

(ii) either—

(A) a change in circumstances relevant to the granting of bail since the court's decision was made; or

(B) the fresh evidence or information of relevance to the granting of bail that was unavailable when the last application for bail was made; and

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Note See the *Bail Act 1992*, s 43A (Power of Supreme Court to review—decision of Magistrates Court or Supreme Court).

(o) the conditions (if any) on which bail is sought.

(4) The accused person must serve a stamped copy of the application and supporting affidavit on the director of public prosecutions.

(5) This rule is subject to rule 4723 (Supreme Court application for review of bail by unrepresented accused person).

4722 Supreme Court bail application by informant

(1) An application in relation to bail by an informant must comply with this division.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 See approved form 4.8 (Supreme Court application in relation to bail) AF2011-63.

(2) The application must—

(a) state the accused person's name; and

(b) state briefly the order (or orders) sought; and

(c) state briefly particulars of the grounds relied on in support of the order (or orders) sought.

(3) The application must be supported by an affidavit.

(4) The informant must serve a stamped copy of the application and supporting affidavit on the accused person.

4723 Supreme Court application for bail by unrepresented accused person

(1) This rule applies if—

(a) an accused person is unrepresented; and

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(b) the person applies for review of bail under the *Bail Act 1992*, section 20B (Power in relation to bail—Supreme Court), section 43 (Power of Supreme Court to review—decision of authorised officer) or section 43A (Power of Supreme Court to review—decision of Magistrates Court or Supreme Court).

(2) The accused person may apply for bail using a short form of application.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 See approved form 4.9 (Supreme Court application for bail by unrepresented accused person) AF2011-64.

(3) The accused person must serve a stamped copy of the application on the director of public prosecutions.

4724 Prosecution application for review of bail decision

(1) This rule applies to an application by the director of public prosecutions for review of a bail decision under the *Bail Act 1992*, section 44 (Right of review of bail decisions—prosecution).

Note Application must be made using approved form 4.11 (Application for review of bail) AF2017-107.

(2) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(3) When the registry is open, the application must be—

(a) filed by delivering it to the registry personally; and

(b) stamped with the date and time of filing.

(4) When the registry is not open, the application must be filed by sending a copy by email to s44bailreview@courts.act.gov.au.

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Division 4.3.4 Supreme Court criminal proceedings—pre-trial procedure

4730 Application—div 4.3.4

This division applies if an accused person is committed to the Supreme Court for trial or sentence.

4731 Supreme Court criminal proceedings—appearance of accused person

(1) This rule applies if the Magistrates Court commits an accused person for trial or sentence in the Supreme Court.

(2) The registrar of the Supreme Court must give the registrar of the Magistrates Court suitable dates for the proceeding to be listed in the Supreme Court.

(3) On the committal of the accused person, the Magistrates Court must set 1 of the dates (the ***appearance date***) for the accused person to appear in the Supreme Court.

(4) If the accused person is granted bail, the court must require the accused person, as a condition of the bail, to appear before the Supreme Court on the appearance date.

4732 Supreme Court criminal proceedings—appearance when committed for sentence

If the accused person is committed for sentence, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) if the accused person pleaded guilty in the Magistrates Court—confirm the accused person's plea of guilty; and

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(c) direct the director of public prosecutions to file in the court a statement of the facts (the ***case statement***) on which the prosecution relies; and

(d) direct the director of public prosecutions to give a copy of the case statement to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and

(e) ask the parties if the matter is urgent; and

(f) make orders in relation to pre-sentence reports; and

(g) ask if any variation of bail is sought; and

(h) give any other directions that the court considers appropriate.

4733 Supreme Court criminal proceedings—appearance when committed for trial

If the accused person is committed for trial, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) ask the accused person whether the person has decided to have the trial by judge alone; and

Note 1 See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in certain criminal proceedings).

Note 2 See approved form 4.11 (Supreme Court criminal proceeding—election for trial by judge alone) AF2006-504.

(c) direct the director of public prosecutions to file in the court—

(i) a draft indictment; and

(ii) the case statement; and

(iii) a list of proposed prosecution witnesses; and

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(d) direct the director of public prosecutions to give a copy of the draft indictment, case statement and list of proposed prosecution witnesses to the accused person or, if the accused person is represented by a solicitor, the solicitor by the date set by the court; and

(e) direct the parties to complete and file in the court a pre-trial questionnaire by the date set by the court; and

Note See approved form 4.10 (Supreme Court criminal proceeding—pre-trial questionnaire) AF2011-11.

(f) ask the parties if the matter is urgent; and

(g) ask about any unusual features of the matter; and

(h) ask about the length of the trial; and

(i) ask if any variation of bail is sought; and

(j) give any other directions that the court considers appropriate.

4734 Supreme Court criminal proceedings—pre-trial questionnaire

If the court directs the parties to complete a pre-trial questionnaire—

(a) the director of public prosecutions must—

(i) complete the column of the questionnaire headed 'DPP'; and

(ii) give the completed questionnaire to the accused person or, if the accused person is represented by a solicitor, the solicitor—

(A) at least 7 days before the day the questionnaire must be filed in the court; or

(B) if the court sets another date—by that date; and

(b) the accused person or the person's lawyer must—

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(i) complete the column of the questionnaire headed 'Accused'; and

(ii) file the completed questionnaire in the court by the date set by the court.

4735 Supreme Court criminal proceedings—completion of pre-trial questionnaire

(1) After the pre-trial questionnaire is completed by the accused person or the person's solicitor, and filed in the court, the registrar—

(a) if the registrar considers that the matter may need to be listed for further case management before the registrar—must set a date for a directions hearing before the registrar, and tell the parties the date; or

(b) in any other case—may set a date for arraignment of the accused person before the court, and tell the parties the date.

(2) In considering whether a matter needs to be listed for further case management, the registrar—

(a) may ask the parties to give the court any further information about the matter the registrar considers necessary; and

(b) must have regard to the following:

(i) the parties' answers in the questionnaire;

(ii) any other documents filed in the proceeding;

(iii) any other information given by a party to the court.

4735A Supreme Court criminal proceedings—registrar's directions hearing

(1) At a directions hearing under rule 4735, the registrar may deal with any matter mentioned in rule 4732 or rule 4733.

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(2) The registrar may refer a matter to a judge, if a party does not comply with directions made by the registrar or the court.

4736 Supreme Court criminal proceedings—arraignment

(1) On the arraignment of the accused person, the director of public prosecutions may present an indictment in relation to the person to the court.

(2) If an indictment is presented by the director of public prosecutions, the accused person must enter a plea.

Note The *Crimes Act 1900*, s 282 provides that, if a person refuses to plead, the court may order a plea of not guilty to be entered on behalf of the person. The plea has the same effect as if the person had pleaded not guilty.

(3) If the accused person enters a plea of guilty, the court must set a date for sentence.

(4) If the accused person enters a plea of not guilty, the court must—

(a) set a date for trial; and

(b) set a date for the pre-trial directions hearing; and

(c) order the accused person to appear before the court on the date set for the pre-trial directions hearing.

4737 Supreme Court criminal proceedings—pre-trial directions hearing

At the pre-trial directions hearing, the court may—

(a) confirm the trial length; and

(b) hear and decide any preliminary or other matters.

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4738 Supreme Court criminal proceedings—directions

(1) A party to a proceeding may, at any time, apply to the court for directions about the conduct of the proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

(2) The court may, at any stage of a proceeding, give any direction about the conduct of the proceeding it considers appropriate, even though the direction may be inconsistent with another provision of these rules.

(3) The court may give a direction about the conduct of the proceeding on application by a party or on its own initiative.

(4) In deciding whether to give a direction under this rule, the interests of justice are paramount.

(5) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.

(6) The court may at any time amend or revoke a direction made under this rule.

(7) The court may amend or revoke a direction made under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction.

(8) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

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4739 Supreme Court criminal proceedings—proceeding already being managed by court

If, under these rules, a proceeding has been assigned to the docket of a judge or the associate judge, the judge or associate judge assigned the proceeding—

(a) must hear the proceeding and any application in relation to the proceeding, unless the court otherwise orders; and

(b) may monitor the proceeding to ensure that the parties comply with any directions given in the proceeding.

Division 4.3.5 Supreme Court criminal proceedings—pre-trial applications

4750 Supreme Court criminal proceedings—application to set aside or stay proceeding

(1) An accused person may apply to set aside or stay any criminal proceeding against the person.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(2) The application must be made and heard before the accused person is arraigned.

(3) If the application is dismissed, the accused person may make a further application under subrule (1) in relation to the same or similar charges only if—

(a) there has been a significant change of circumstances; and

(b) the application is limited to the change of circumstances.

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4751 Supreme Court criminal proceedings—application for separate trials

An accused person may apply for—

(a) separate trials of different charges alleged against the person in the same indictment; and

(b) a separate trial from that of someone else committed for trial and charged in the same indictment.

Note Pt 6.2 (Applications in proceedings) applies to the application.

4752 Supreme Court criminal proceedings—other pre-trial applications

An application made in the course of a criminal proceeding must be made in writing if—

(a) the application—

(i) is made before the prosecution's case opens or witnesses are called; and

(ii) raises any question about the admissibility of evidence, or any other question of law affecting the conduct of the trial, or

(b) the application would postpone or delay a trial that has been listed for hearing if it were granted; or

(c) the application cannot reasonably be made without notice to other parties; or

(d) the application is directed by a judge to be in writing.

Note Pt 6.2 (Applications in proceedings) applies to the application.

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4753 Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752

(1) This rule applies to an application under any of the following rules:

- rule 4750 (Supreme Court criminal proceedings—application to set aside or stay proceeding)
- rule 4751 (Supreme Court criminal proceedings—application for separate trials)
- rule 4752 (Supreme Court criminal proceedings—other pre-trial applications).

(2) The application must—

(a) state the party making the application; and

(b) state briefly the order (or orders) sought; and

(c) state briefly particulars of the grounds relied on that are sufficient for any other party to decide whether to call evidence to resolve the issues raised; and

(d) state briefly any questions of law; and

(e) be supported by an affidavit filed with the application stating—

(i) any evidence necessary to establish the grounds of the application; and

(ii) any evidence that the applicant wants the court to receive.

(3) A stamped copy of the application and any supporting affidavits must be served on all other parties as soon as possible after the notice is filed but at least 14 days before the date set for the trial to which the application relates.

(4) This rule is subject to rule 4750 (2) (Supreme Court criminal proceedings—applications to set aside or stay proceedings).

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(5) If the trial date has been set, the trial date may be set as the return date for the application and the application may be heard by the court immediately before the trial starts.

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Part 4.4 Forensic proceedings

Division 4.4.1 Forensic proceedings—preliminary

4800 Definitions—pt 4.4

In this part:

forensic proceeding means a proceeding in relation to an application to carry out a forensic procedure under the Act or the Crimes Act.

prescribed offender—see the Crimes Act, section 23WA.

serious offender—

(a) for an application under the Act—see the Act, section 9; and

(b) for an application under the Crimes Act—see the Crimes Act, section 23WA.

the Act means the *Crimes (Forensic Procedures) Act 2000*.

the Crimes Act means the *Crimes Act 1914* (Cwlth).

4801 Forensic proceedings—application of applied civil rules

(1) The applied civil rules apply to a forensic proceeding as if—

(a) a reference to a ***proceeding*** were a reference to a forensic proceeding; and

(b) a reference to an ***active party*** were a reference to each party to the proceeding; and

(c) any other necessary changes were made.

(2) In this rule:

applied civil rules means division 2.12.1 (Expert evidence generally).

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4802 Forensic proceedings—application of applied criminal rules

(1) The applied criminal rules apply to a forensic proceeding as if—

(a) a reference to a ***criminal proceeding*** were a reference to a forensic proceeding; and

(b) a reference to an ***accused person*** were a reference to—

(i) for division 4.4.2—a suspect; or

(ii) for division 4.4.3—a serious offender or a prescribed offender.

(2) In this rule:

applied criminal rules means the following:

- division 4.1.2 (Criminal proceedings—service)
- rule 4053 (Criminal proceedings—inspection of registry files)
- division 4.3.2 (Supreme Court criminal proceedings—representation).

Division 4.4.2 Forensic proceedings under the Act, pt 2.5 and the Crimes Act, pt 1D, div 5

4803 Application—div 4.4.2

This division applies to a forensic proceeding under—

(a) the Act, part 2.5 (Forensic procedures on suspect by order of magistrate); or

(b) the Crimes Act, part 1D, division 5 (Forensic procedures on suspect by order of a magistrate).

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4804 Forensic proceedings—filing of application

An application to carry out a forensic procedure must be filed in the Magistrates Court.

Note Under the Act, pt 2.5, and the Crimes Act, pt 1D, div 5, an authorised applicant may apply to a magistrate for—

(a) an order authorising the carrying out of a forensic procedure on a suspect (see the Act, s 35 and the Crimes Act, s 23WU); or

(b) an interim order authorising the immediate carrying out of a forensic procedure on a suspect (see the Act, s 42 and the Crimes Act, s 23XB).

4805 Forensic proceedings—personal service

A sealed copy of the application must be served personally on the suspect at least 7 days before the return date for the application.

Note ***Return date***, for an application, is defined in the dictionary.

Division 4.4.3 Forensic proceedings under the Act, pt 2.7 and the Crimes Act, pt 1D, div 6A

4806 Application—div 4.4.3

This division applies to a forensic proceeding under—

(a) the Act, part 2.7 (Carrying out of certain forensic procedures after conviction of serious offenders); or

(b) the Crimes Act, part 1D, division 6A (Carrying out of certain forensic procedures after conviction of serious and prescribed offenders).

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4807 Forensic proceedings—application and service

(1) If an application to carry out a forensic procedure on a serious offender or prescribed offender is made to the court that is sentencing the offender—

(a) notice of the application must be given to the offender at least 7 days before the sentencing; and

(b) the application must be made orally at the sentencing.

(2) If an application to carry out a forensic procedure on a serious offender or prescribed offender is made to a court after the sentencing of the offender—

(a) the application must be filed with the court; and

(b) a sealed copy of the application must be served personally on the offender at least 7 days before the return date for the application.

Note 1 ***Return date***, for an application, is defined in the dictionary.

Note 2 Under the Act, pt 2.7, a police officer may apply to any court for an order for the carrying out of an intimate or non-intimate forensic procedure for a serious offender in certain circumstances (see the Act s 77 (1) and (2)). The application may be made to the court that is sentencing the serious offender or prescribed offender or to any other court at a later time (see the Act, s 77 (3)).

Note 3 Under the Crimes Act, pt 1D, div 6A, an authorised applicant may apply to any court for an order for the carrying out of an intimate or non-intimate forensic procedure in certain circumstances (see the Crimes Act s 23XWO (1) and (2)). This application may be made to the court that is sentencing a serious offender or prescribed offender or to any other court at a later time (see the Crimes Act, s 23XWO (5)).

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Division 4.4.4 Forensic proceedings—general

4808 Forensic proceedings—application not served in time

(1) This rule applies if—

(a) either—

(i) an application under rule 4804 is served on a suspect; or

(ii) an application under rule 4807 is served on a serious offender or prescribed offender; but

(b) the application is not served at least 7 days before the return date for the application.

Note ***Return date***, for an application, is defined in the dictionary.

(2) The court may only hear and decide the application on the return date if the court considers it just to hear and decide the application on that date and—

(a) the court is satisfied that the suspect, serious offender or prescribed offender will suffer no significant prejudice if it hears and decides the application on the return date; or

(b) the suspect, serious offender or prescribed offender agrees to the court hearing and deciding the application on the return date.

4809 Forensic proceedings—filing and service of supporting affidavit

(1) For an application under rule 4804 or rule 4807, the supporting affidavit must be filed in the court and a stamped copy then served with the application.

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(2) However, the court may give leave for an affidavit not served as required by subrule (1) to be relied on at the hearing.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

4810 Forensic proceedings—costs

(1) This rule applies if an application under this part is unsuccessful.

(2) The court may order that the applicant pay the suspect's, serious offender's or prescribed offender's costs if there are special or exceptional circumstances that justify the order.

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Chapter 5 Appellate proceedings

Part 5.1 Appellate proceedings—preliminary

5000 Definitions—ch 5

In this chapter:

conviction means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

(a) a conviction recorded by the Supreme Court for the person; or

(b) a finding of guilt recorded by the Supreme Court for the person.

sentence means an order, decision or other sentence (however described) imposed by the Supreme Court on a person—

(a) after the person has been convicted or found guilty; or

(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)

2 a good behaviour order under the *Crimes (Sentencing) Act 2005*, section 13 (Good behaviour orders)

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

5001 Appellate proceedings—application of ch 2 generally

(1) Except as provided by this rule or another rule in this chapter, chapter 2 (Civil proceedings generally) does not apply to an appellate proceeding.

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(2) The applied civil rules apply, with any necessary changes, to an appellate proceeding that is a civil proceeding.

(3) In this rule:

applied civil rules means the following:

- rule 30 (Who may start and carry on a proceeding)
- rule 72 (Originating process—solicitor's statement about filing)
- division 2.4.3 (Changing parties)
- division 2.4.4 (Included or changed parties—future conduct of proceedings)
- division 2.4.9 (People with a legal disability)
- part 2.9 (Preservation of rights and property)
- part 2.10 (Offers of compromise)
- part 2.16 (Judgment and other orders)
- part 2.17 (Costs)
- division 2.20.2 (Taking of accounts)
- division 2.20.3 (Making of inquiries)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous—ch 2).

Note Ch 6 has provisions applying to all proceedings (see r 6000 (Application—ch 6)).

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Part 5.2 Appeals from registrar

Note Appeals to the Court of Appeal are dealt with in pt 5.4.

5010 Definitions—pt 5.2

In this part:

appeal means an appeal to the court from a decision of—

(a) for the Supreme Court—the registrar of the Supreme Court; and

(b) for the Magistrates Court—the registrar of the Magistrates Court.

decision means an order to which rule 6256 (Appeals from registrar's orders etc) applies.

Note ***Order***—see the dictionary (see also def ***made***).

5011 Application—pt 5.2

This part applies to an appeal to the court subject to any territory law applying to the appeal.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

5012 Appeals from registrar—starting appeal

An appeal may be started in the court by filing a notice of appeal in the court.

Note See approved form 5.1 (Appeal from Registrar—notice of appeal) AF2017-183.

5013 Appeals from registrar—requirements for notice of appeal

(1) A notice of appeal to the court must state—

(a) who made the decision appealed from; and

(b) the decision and the date of the decision; and

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(c) whether the appeal is from all or part of the decision; and

(d) if the appeal is from part of the decision—the part appealed from; and

(e) whether the appellant will seek to put further evidence before the court; and

(f) the order sought.

(2) The notice of appeal need not set out grounds of appeal.

5014 Appeals from registrar—time for filing notice of appeal

(1) A notice of appeal to the court from a decision of the registrar must be filed in the court—

(a) for an appeal from a decision of the registrar of the Supreme Court, other than a decision mentioned in paragraph (c)—not later than 5 days after the day the decision is made, or any further time the Supreme Court allows; or

(b) for an appeal from a decision of the registrar of the Magistrates Court—not later than 5 days after the day the decision is made, or any further time the Magistrates Court allows; or

(c) for an appeal from a decision of the registrar of the Supreme Court made under schedule 6—not later than 28 days after the day the decision is made, direction given or act done, or any further time the Supreme Court allows.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for further time.

Note 2 An application for further time may be made before or after the time mentioned in r (1) (see Legislation Act, s 151C).

(2) An application for further time must be accompanied by an affidavit showing—

(a) the nature of the case in summary form; and

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(b) each question involved; and

(c) the reasons why the extension of time should be given.

5015 Appeals from registrar—notice of appeal to be sealed

The registrar of the court in which an appeal is brought must seal the original and filed copies of a notice of appeal.

Note The registrar may reject a notice of appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5016 Appeals from registrar—serving notice of appeal

(1) The appellant must serve a sealed copy of a notice of appeal on each respondent (if any) to the appeal not later than 3 days after the day the notice is filed.

(2) However, a notice of appeal from a decision refusing an application made without notice need not be served unless the court otherwise orders on its own initiative.

(3) The court may order that the notice of appeal be served on anyone else on application by a party to the appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

5017 Appeals from registrar—stay and reinstatement

(1) An appeal to the court from a decision of the registrar in a civil proceeding does not operate as a stay of the decision appealed from unless a stay of the decision is ordered by the registrar or the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for a stay or for an order under this rule.

(2) An application for a stay of the decision may be made by a party to the appeal.

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(3) In an urgent case, the application may be made without serving it on anyone.

(4) If the application is made without serving it on anyone, the application must be accompanied by an affidavit setting out the grounds relied on in support of the claim of urgency.

(5) If the decision appealed from is stayed by the registrar or the court, the registrar or the court may make any order that the registrar or the court considers necessary or desirable to give effect to the stay.

(6) The court may, by order, amend or set aside an order for a stay (including an order made by the registrar).

(7) An application for an order of the court under subrule (1) may be made whether or not a similar application has been made to the registrar.

(8) If any step has been taken for the enforcement of a decision and the court amends or sets aside the decision on appeal under this part, the court may make the orders for reinstatement it considers appropriate.

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Part 5.3 Appeals to Supreme Court

Note to pt 5.3

For appeals to Court of Appeal, see pt 5.4, for orders to review Magistrates Court decisions, see pt 5.5 and for reference appeals, see pt 5.6.

Division 5.3.1 Appeals to Supreme Court—preliminary

5050 Definitions—pt 5.3

In this part:

appeal means an appeal to the Supreme Court from an order of a court or tribunal, but does not include—

(a) an appeal to the Court of Appeal; or

Note See pt 5.4 (Appeals to Court of Appeal).

(b) an order to review a decision of the Magistrates Court mentioned in the *Magistrates Court Act 1930*, section 219B (Appeals by way of orders to review); or

Note See pt 5.5 (Orders to review Magistrates Court decisions).

(c) a reference appeal to the Supreme Court mentioned in the *Magistrates Court Act 1930*, section 219AB (2) (Reference appeal following acquittal on indictment); or

Note See div 5.6.1 (Reference appeals—Supreme Court).

(d) a question referred to the Supreme Court to which division 5.7.1 (Questions referred—Supreme Court) applies.

court or tribunal means a court or tribunal from which an appeal may be made to the Supreme Court, but does not include the registrar.

order, of a court or tribunal, includes a decision, conviction, order, sentence or penalty mentioned in the *Magistrates Court Act 1930*, section 208 (Appeals to which div 3.10.2 applies).

Note ***Order*** is defined in the dictionary (see also def ***made***).

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registrar, of a court or tribunal, means—

(a) for the Magistrates Court—the registrar of the Magistrates Court; or

(b) for a tribunal—the registrar or a deputy registrar of the tribunal or, if there is no registrar of the tribunal, the person in charge of the tribunal's administration.

relevant law, in relation to an appeal, means the law under which the appeal is brought.

tribunal includes any entity (other than a court) from which an appeal may be made to the Supreme Court.

5051 Application—pt 5.3

(1) This part applies to an appeal to the Supreme Court from an order of a court or tribunal.

(2) This part applies subject to any territory law applying to the appeal.

Note 1 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 2 Appeals may be made from the courts and tribunals mentioned in table 5051 to the Supreme Court.

Note 3 Certain jurisdiction of the Supreme Court under the *Legal Profession Act 2006* must be exercised by a Full Court (see *Supreme Court Act 1933*, s 11).

Table 5051 Courts and tribunals that may be appealed from

column 1 item	column 2 court or tribunal	column 3 constitution of Supreme Court for appeal	column 4 law appealed under
1	ACT civil and administrative tribunal	judge or associate judge	*ACT Civil and Administrative Tribunal Act 2008*, s 83 (for appeals only) and s 86 *Mental Health (Treatment and Care) Act 1994*, s 141

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column 1 item	column 2 court or tribunal	column 3 constitution of Supreme Court for appeal	column 4 law appealed under
2	adjudicator	judge or associate judge	*Building and Construction Industry (Security of Payment) Act 2009*, s 43
3	admissions board	Full Court or judge	*Legal Profession Act 2006*, s 25
4	relevant council	Full Court	*Legal Profession Act 2006*, s 81
5	law society council or relevant council	judge	*Legal Profession Act 2006*, s 207, s 239 (4), s 249 (5), s 514 and s 589 (4)
6	Magistrates Court	judge or associate judge	*Domestic Violence and Protection Orders Act 2008* (repealed), s 97 *Family Violence Act 2016*, s 93 *Health Records (Privacy and Access) Act 1997*, s 32 (1) *Leases (Commercial and Retail) Act 2001*, s 155 *Magistrates Court Act 1930*, s 274 *Personal Violence Act 2016*, s 85
7	Magistrates Court	judge	*Magistrates Court Act 1930*, s 207 (1) (a)

5052 Appeals to Supreme Court—general powers

(1) For an appeal to the Supreme Court, the court—

(a) has all the powers and duties of the court or tribunal that made the order appealed from; and

(b) may draw inferences of fact; and

(c) may, on special grounds, receive further evidence about questions of fact, either orally in court, by affidavit or in another way; and

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(d) may make any of the following orders:

(i) an order confirming, amending or setting aside the order of the court or tribunal appealed from;

(ii) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the court or tribunal in accordance with any direction the court considers appropriate; and

(e) may make any other order that it considers appropriate.

(2) If the Supreme Court orders that it will receive further evidence, and the evidence is to be given by an expert witness, the following rules apply, with necessary changes, to the appeal:

- division 2.12.1 (Expert evidence generally)
- division 2.12.2 (Multiple expert witnesses for same issue)
- rule 1242 (Supplementary expert reports)
- rule 1243 (Expert evidence to be covered by expert report)
- rule 1244 (Expert reports admissible as evidence of opinion etc)
- rule 1245 (Requiring attendance of expert for cross-examination etc)
- rule 1246 (Tender of expert report).

(3) Subrule (1) (c) is subject to rule 5193 (Further evidence on appeal to Supreme Court—Magistrates Court Act 1930, s 214).

5053 Appeals to Supreme Court—non-publication order

(1) This rule applies if—

(a) the court or tribunal appealed from made an order prohibiting the publication of a party's name (the ***non-publication order***); and

(b) the non-publication order has not been discharged by the court or tribunal or by the Supreme Court.

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(2) For the appeal, the non-publication order remains in force as if it were an order of the Supreme Court, subject to any order of the Supreme Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) In this rule:

party means a party to the proceeding in which the order appealed from was made.

5054 Appeals to Supreme Court—stay and reinstatement

(1) An appeal to the Supreme Court in a civil proceeding does not operate as a stay of the order of the court or tribunal appealed from unless—

(a) the relevant law or these rules otherwise provide; or

(b) in any other case—

(i) the court or tribunal, under another territory law, orders a stay of the order; or

(ii) the Supreme Court orders a stay of the order on application by a party to the appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for a stay or an order under this rule.

(2) In an urgent case, an application to the Supreme Court for a stay may be made without serving it on anyone.

(3) If the application to the Supreme Court for a stay is made without serving it on anyone, the application must be accompanied by an affidavit setting out the grounds relied on in support of the claim of urgency.

(4) If the order appealed from is stayed by the Supreme Court, the court may make any order that it considers necessary or desirable to give effect to the stay.

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Examples

1 If the order appealed from is the cancellation or suspension of a licence (however described), the Supreme Court may order that the cancellation or suspension not have effect until the appeal is decided.

2 If the order appealed from is the refusal to issue a licence (however described), the Supreme Court may order that the licence be issued pending the deciding of the appeal.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(5) If an appeal mentioned in the *Magistrates Court Act 1930*, section 207 (1) (a) (Jurisdiction of Supreme Court) has been properly started—

(a) the enforcement of the order appealed from is stayed until the appeal ends, is abandoned or discontinued; and

(b) if the appellant is in custody and is not detained for any other reason, the appellant—

(i) may be granted bail under the *Bail Act 1992*; or

(ii) may be remanded in custody on the order of the Supreme Court or Magistrates Court.

(6) The Supreme Court may, by order, amend or set aside—

(a) an order of the court or tribunal staying the order of the court or tribunal appealed from; or

(b) an order made by it under this rule.

(7) An application for an order of the Supreme Court for a stay may be made whether or not a similar application has been made to the court or tribunal.

(8) If any step has been taken for the enforcement of an order and the Supreme Court amends or sets aside the order on appeal under this part, the court may make the orders for reinstatement it considers appropriate.

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5055 Appeals to Supreme Court—security for costs

(1) Security for costs of an appeal is not required, unless the Supreme Court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) This rule does not limit division 2.17.8 (Security for costs).

Division 5.3.2 Appeals to Supreme Court—leave to appeal

5070 Application—div 5.3.2

(1) This division applies if—

(a) a person wants to appeal to the Supreme Court from an order of a court or tribunal; and

(b) the relevant law requires the Supreme Court's leave to appeal.

(2) The person must make an application for leave to appeal under this division.

Note Leave to appeal is required for orders of the following courts and tribunals:

- the ACAT (for applications to appeal mentioned in the *ACT Civil and Administrative Tribunal Act 2008*, s 86 (Appeals to Supreme Court))
- the Magistrates Court (for appeals mentioned in the *Magistrates Court Act 1930*, s 274 (1) (Cases in which appeal may be brought)).

5071 Appeals to Supreme Court—application for leave to appeal

(1) The application for leave to appeal must comply with this division.

Note 1 See approved form 5.2 (Supreme Court—application for leave to appeal) AF2006-386.

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Note 2 The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

(2) The application must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

(b) the draft notice of appeal.

(3) If the applicant is also applying for leave to appeal out of time under division 5.3.3 (Appeals to Supreme Court—leave to appeal out of time), the application for leave to appeal under this division and for leave to appeal out of time under division 5.3.3 may be made in a single application (supported by a single affidavit).

(4) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5072 Appeals to Supreme Court—time for filing application for leave to appeal

The applicant for leave to appeal must file the application for leave to appeal, accompanying affidavit, and draft notice of appeal, in the Supreme Court not later than 28 days after the day the order appealed from is made, or not later than any further time allowed by the court.

Note 1 See r 5103 (Appeals to Supreme Court—time for filing notice of appeal).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time to apply for leave to appeal.

Note 3 An application for further time may be made before or after the time mentioned in this rule (see Legislation Act, s 151C).

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5073 Appeals to Supreme Court—application for leave to appeal to be sealed

The registrar of the Supreme Court must seal the original and filed copies of an application for leave to appeal.

Note The registrar may reject an application for leave to appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5074 Appeals to Supreme Court—serving application for leave to appeal

(1) The applicant for leave to appeal must, not later than 3 days after the day the application is filed, serve the following on each person who was a party to, or given leave to intervene in, the proceeding in which the order appealed from was made (the ***original proceeding***):

(a) a sealed copy of the application;

(b) a stamped copy of the accompanying affidavit;

(c) a stamped copy of the draft notice of appeal.

(2) The documents mentioned in subrule (1) must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) if the person filed a notice of intention to respond or defence (however described) in the court or tribunal that made the order appealed from, or otherwise gave the court or tribunal an address for service (however described)—on the person at the person's address for service (however described) in the original proceeding.

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(3) Part 6.8 (Service) applies to this rule as if a reference to an address for service were a reference to an address for service mentioned in subrule (2) (b).

Note See in particular r 6420 (Ordinary service—address for service).

5075 Appeals to Supreme Court—notice of intention to respond to application for leave to appeal

(1) A respondent to the application for leave to appeal must file in the Supreme Court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

(2) To remove any doubt, if the application for leave to appeal is a single application mentioned in rule 5071 (3) (Appeals to Supreme Court—application for leave to appeal), the respondent need only file a single notice of intention to respond.

5076 Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal

If a respondent to the application for leave to appeal wants to present evidence, the respondent must file, and serve a stamped copy of, the respondent's affidavits not later than 14 days after the day the application is served on the respondent.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending or shortening of time by the court.

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Division 5.3.3 Appeals to Supreme Court—leave to appeal out of time

5080 Meaning of *out of time*—div 5.3.3

In this division:

out of time, for an appeal from an order of a court or tribunal, means later than the time provided under the relevant law or this part within which the appeal must be started (disregarding any further time allowed by the Supreme Court for starting the appeal).

5081 Application—div 5.3.3

(1) This division applies if a person wants to appeal out of time to the Supreme Court from an order of a court or tribunal.

(2) The person must make an application for leave to appeal out of time under this division.

5082 Appeals to Supreme Court—application for leave to appeal out of time

(1) The application for leave to appeal out of time must comply with this division.

Note 1 See approved form 5.3 (Supreme Court—application for leave to appeal out of time) AF2006-387.

Note 2 The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

(2) The application must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

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(b) the draft notice of appeal.

(3) If the applicant is also applying for leave to appeal under division 5.3.2 (Appeals to Supreme Court—leave to appeal), the application for leave to appeal out of time under this division and for leave to appeal under division 5.3.2 may be made in a single application (supported by a single affidavit).

(4) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5083 Appeals to Supreme Court—filing application for leave to appeal out of time

The applicant for leave to appeal out of time must file the application for leave to appeal out of time, accompanying affidavit, and draft notice of appeal, in the Supreme Court.

Note For when the application for leave to appeal out of time must be filed, see r 5103 (d) (Appeals to Supreme Court—time for filing notice of appeal).

5084 Appeals to Supreme Court—application for leave to appeal out of time to be sealed

The registrar of the Supreme Court must seal the original and filed copies of an application for leave to appeal out of time.

Note The registrar may reject an application for leave to appeal out of time that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc).

5085 Appeals to Supreme Court—serving application for leave to appeal out of time

(1) The applicant for leave to appeal out of time must, not later than 3 days after the day the application is filed, serve the following on each person who was a party to, or given leave to intervene in, the proceeding in which the order appealed from was made (the ***original proceeding***):

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(a) a sealed copy of the application;

(b) a stamped copy of the accompanying affidavit;

(c) a stamped copy of the draft notice of appeal.

(2) The documents mentioned in subrule (1) must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) if the person filed a notice of intention to respond or defence (however described) in the court or tribunal that made the order appealed from, or otherwise gave the court or tribunal an address for service (however described)—on the person at the person's address for service (however described) in the original proceeding.

(3) Part 6.8 (Service) applies to this rule as if a reference to an address for service were a reference to an address for service mentioned in subrule (2) (b).

Note See in particular r 6420 (Ordinary service—address for service).

5086 Appeals to Supreme Court—notice of intention to respond to application for leave to appeal out of time

(1) A respondent to the application for leave to appeal out of time must file in the Supreme Court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

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(d) any other necessary changes were made.

(2) To remove any doubt, if the application for leave to appeal is a single application mentioned in rule 5082 (3) (Appeals to Supreme Court—application for leave to appeal out of time), the respondent need only file a single notice of intention to respond.

5087 Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal out of time

If a respondent to the application for leave to appeal out of time wants to present evidence, the respondent must file, and serve a stamped copy of, the respondent's affidavits not later than 14 days after the day the application is served on the respondent.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending or shortening of time by the court.

Division 5.3.4 Appeals to Supreme Court—procedure generally

5100 Appeals to Supreme Court—starting appeal

An appeal may be started in the Supreme Court by filing a notice of appeal in the Supreme Court.

Note See approved form 5.4 (Supreme Court—notice of appeal) AF2006-388.

5101 Appeals to Supreme Court—requirements for notice of appeal etc

(1) The notice of appeal to the Supreme Court must state—

(a) the court or tribunal's name; and

(b) the order of the court or tribunal appealed from and the date of the order; and

(c) whether the appeal is from all or part of the order; and

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(d) if the appeal is from part of the order—the part appealed from; and

(e) whether the appellant will seek to put further evidence before the court; and

(f) if further evidence is to be put before the court—briefly the nature of the evidence and what is sought to be proved; and

(g) briefly, but specifically, the grounds relied on in support of the appeal, including, in particular, any grounds on which it is claimed that there is an error of law in the order of the court or tribunal; and

(h) the order sought.

(2) If the appeal is brought by leave of the Supreme Court—

(a) the notice of appeal must state—

(i) that the appeal is brought by leave; and

(ii) the date of the court order giving leave; and

(b) a sealed copy of the order giving leave to appeal must be attached to the notice of appeal and every copy of the notice of appeal served under rule 5107 (Appeals to Supreme Court—serving notice of appeal).

(3) If the appellant wants to present the appellant's case in writing under part 5.8 (Written cases), the notice of appeal must state that the appellant wants to do so.

(4) If there is a respondent to the appeal, the notice of appeal must include an instruction that before taking any other step in the proceeding the respondent must file in the Supreme Court a notice of intention to respond (unless the respondent filed a notice of intention to respond to an application for leave to appeal, or for leave to appeal out of time, in the proceeding, and the information provided in the notice has not changed).

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(5) On the hearing of the appeal, the appellant must not, without the Supreme Court's leave—

(a) raise any question that is not stated in the notice of appeal; or

(b) rely on any ground in support of the judgment sought that is not stated in the notice of appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

5102 Appeals to Supreme Court—parties to appeal

(1) A person must be included as a respondent to the appeal if the person—

(a) appeared or was given leave to appear before the court or tribunal in the proceeding in which the order appealed from was made (the ***original proceeding***); and

(b) would be directly affected by the order sought by the notice of appeal, or is interested in maintaining the order appealed from.

(2) If the order appealed from is an order of a tribunal other than the ACAT, the tribunal must be included as a respondent to the appeal.

(3) If an unincorporated organisation or association appeared or was given leave to appear before the court or tribunal in the original proceeding—

(a) a reference in subrule (1) to a person is a reference to someone acting (other than as a legal practitioner) for the organisation or association; and

(b) subrule (1) (b) is taken to require that the interests of the organisation or association, found out from its objects or purposes, would be directly affected by the order sought by the notice of appeal or by the maintenance of the order appealed from.

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(4) The Supreme Court may order that—

(a) a person (whether or not a party to the original proceeding) be included or removed as a party to the appeal; or

(b) a person directly affected by the appeal be included or substituted as a party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) However, a person may be made an appellant only with the person's consent.

(6) If the Supreme Court orders the inclusion or substitution of someone as a party to the appeal, it may adjourn the hearing of the appeal and make any order it considers appropriate about the conduct of the appeal.

5103 Appeals to Supreme Court—time for filing notice of appeal

The notice of appeal must be filed in the Supreme Court—

(a) not later than the time provided by the relevant law; or

(b) not later than any further time the Supreme Court allows; or

(c) if no time is provided by the relevant law and leave to appeal has been given—

(i) not later than 7 days after the day leave to appeal is given, or not later than any further time allowed by the Supreme Court on application filed in the court before the end of the 7-day period; or

(ii) if the Supreme Court sets a time for the filing when giving leave to appeal—not later than the time set, or not later than any further time allowed by the Supreme Court on

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application filed in the court before the end of the time set; or

Note Pt 6.2 (Applications in proceedings) applies to an application for further time.

(d) if no time is provided by the relevant law and leave to appeal under division 5.3.2 (Appeals to Supreme Court—leave to appeal) is not necessary—not later than 28 days after the day the order appealed from was made, or not later than any further time the Supreme Court allows on application filed in the court before the end of the 28-day period.

Note Div 5.3.3 (Appeals to Supreme Court—leave to appeal out of time) applies to an application for further time.

5104 Appeals to Supreme Court—notice of appeal to be sealed

The registrar of the Supreme Court must seal the original and filed copies of the notice of appeal.

Note The registrar may reject a notice of appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5105 Appeals to Supreme Court—numbering etc of appeals

(1) When the notice of appeal is sealed, the registrar of the Supreme Court must give a distinguishing number or other unique identifier to the appeal started by the notice.

(2) The registrar must ensure that the original and each copy sealed under rule 5104 is endorsed with—

(a) the distinguishing number or other unique identifier given to the appeal; and

(b) the date when the notice was filed in the court.

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5106 Appeals to Supreme Court—date for settlement of appeal papers

The registrar of the Supreme Court must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

5107 Appeals to Supreme Court—serving notice of appeal

(1) The appellant must serve a sealed copy of the notice of appeal on each respondent.

(2) The notice of appeal must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) if a respondent filed a notice of intention to respond or defence (however described) in the court or tribunal that made the order appealed from, or otherwise gave the court or tribunal an address for service (however described)—on the respondent at the respondent's address for service (however described) in the proceeding in which the order appealed from was made; or

(c) for an appeal mentioned in the *Magistrates Court Act 1930*, section 208 (1), other than section 208 (1) (a)—on the informant; or

(d) for an appeal mentioned in the *Magistrates Court Act 1930*, section 208 (1) (a)—on each person mentioned in the paragraph.

(3) The appellant must also serve a sealed copy of the notice of appeal on the registrar of the court or tribunal.

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(4) On application by a party to the appeal or on its own initiative, the Supreme Court may order the appellant to serve the notice of appeal on anyone else.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) The appellant must serve the notice of appeal under subrule (1) not later than 7 days after the day the notice is filed, but no later than 5 days before the day for settling the appeal papers, unless the Supreme Court otherwise orders.

(6) If the Supreme Court makes an order under subrule (5), the registrar of the Supreme Court must make a note of the order on the notice of appeal.

(7) Part 6.8 (Service) applies to this rule as if a reference to an address for service were a reference to an address for service mentioned in subrule (2) (b).

Note See in particular r 6420 (Ordinary service—address for service).

5108 Appeals to Supreme Court—notice of intention to respond

(1) A respondent to the appeal must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the notice of appeal were an originating claim; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

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(2) However, this rule does not apply to a respondent if the respondent filed a notice of intention to respond under rule 5075 (Appeals to Supreme Court—notice of intention to respond to application for leave to appeal), rule 5086 (Appeals to Supreme Court—notice of intention to respond to application for leave to appeal out of time) or rule 5092 (Referral of appeal—notice of intention to respond to application for leave to appeal) in the proceeding, and the information provided in the notice has not changed.

5109 Appeals to Supreme Court—respondent taken to be served by filing notice of intention to respond

(1) This rule applies to a respondent to the appeal if—

(a) the respondent is represented by a solicitor; and

(b) the respondent has not been served with the notice of appeal for the appeal, but files a notice of intention to respond (other than a conditional notice of intention to respond).

(2) The respondent is taken to have been served with the notice of appeal on the day the respondent files the notice of intention to respond.

5110 Appeals to Supreme Court—documents

(1) Not later than 14 days after the day the notice of appeal is served on the registrar of the court or tribunal appealed from, the registrar of the court or tribunal must—

(a) give the registrar of the Supreme Court and serve on each appellant—

(i) a copy of the order appealed from; and

(ii) if the court or tribunal gave written reasons for its order—a copy of the reasons, certified by the registrar of the court or tribunal; and

(iii) if there is no transcript of the proceeding in which the order appealed from was made—a copy of the notes (if any) of

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the proceeding, certified by the registrar of the court or tribunal; and

(iv) a list of the documents and any other exhibits that were before the court or tribunal, certified by the registrar of the court or tribunal; and

(b) give the registrar of the Supreme Court all documents and exhibits that were before the court or tribunal in relation to the proceeding in which the order appealed from was made.

(2) Not later than 14 days after the day the notice of appeal is filed in the Supreme Court, the appellant must, if there is a transcript of the proceeding in the court or tribunal, file in the Supreme Court a copy of the transcript of—

(a) the evidence in the proceeding in the court or tribunal; and

(b) the decision made by the court or tribunal.

(3) If the appeal is from an order of the ACAT, the list mentioned in subrule (1) (a) (iv) must—

(a) state any documents that were the subject of an order under the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (2) (Hearings in private or partly in private); and

(b) state any documents for which a certificate of the Minister is in force under that Act, section 22E (Certain material not required to be disclosed); and

(c) state any documents for which a certificate is in force under that Act, section 22I (Non-disclosure certificates) and whether an order was made by the tribunal under that Act, section 22J (Dealing with non-disclosable matters—tribunal) in relation to the document.

(4) If the appeal is from an order of the ACAT and the ACAT has not given written reasons for the order, the appellant must—

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(a) ask the ACAT for a written statement of reasons for the order; and

(b) file a copy of the statement in the Supreme Court, not later than 14 days after the day the appellant receives the statement.

5111 Appeals to Supreme Court—amending notice of appeal

(1) Before the appeal papers are settled, the appellant may amend the notice of appeal without the Supreme Court's leave.

(2) After the appeal papers are settled, the appellant may amend the notice of appeal only with the Supreme Court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) The provisions of part 2.7 (Amendment) mentioned in subrule (4) apply to an amendment of the notice of appeal as if—

(a) the notice of appeal were a pleading; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

(4) The provisions of part 2.7 applying to an amendment of the notice of appeal are the following:

- rule 502 (Amendment—of documents)
- rule 508 (Amendment—when leave to amend ceases to have effect)
- rule 509 (Amendment—procedure)
- rule 510 (Amendment—person required to make)
- rule 511 (Amendment—service of amended or revised document etc)
- for an appeal in a civil proceeding—rule 513 (Amendment—costs).

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5112 Appeals to Supreme Court—cross-appeal

(1) If a respondent wants to appeal from all or part of the order appealed from, or wants an amendment of the order, the respondent need not start a substantive appeal.

(2) However, the respondent must—

(a) file a notice of cross-appeal in the Supreme Court not later than 28 days after the day the notice of appeal is served on the respondent, or not later than any further time allowed by the Supreme Court; and

(b) serve a sealed copy of the notice of cross-appeal, not later than 7 days after the day the notice of cross-appeal is filed, but no later than 5 days before the day for settling the appeal papers, unless the Supreme Court otherwise orders, on the following:

(i) each appellant and any other respondent;

(ii) any other party to the proceeding in which the order appealed from was made (the ***original proceeding***) who would be directly affected by the order that the respondent seeks.

Note 1 See approved form 5.5 (Supreme Court—notice of cross-appeal) AF2006-389.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time.

Note 3 For the use of a notice of contention instead of a notice of cross-appeal, see r 5115.

(3) If a party mentioned in subrule (2) (b) (ii) filed a notice of intention to respond or defence (however described) in the court or tribunal that made the order appealed from, or otherwise gave the court or tribunal an address for service (however described), the notice of cross-appeal may be served on the party at the party's address for service (however described) in the original proceeding.

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(4) Part 6.8 (Service) applies to this rule as if a reference to an address for service were a reference to an address for service mentioned in subrule (3).

Note See in particular r 6420 (Ordinary service—address for service).

(5) The notice of cross-appeal must state—

(a) whether the appeal is from all or part of the order or seeks an amendment of the order; and

(b) if the appeal is from part of the order or seeks an amendment of the order—the part the respondent cross-appeals from; and

(c) either—

(i) the order that the respondent seeks instead of the order cross-appealed; or

(ii) the amendment of the order that the respondent seeks; and

(d) whether the respondent will seek to put further evidence before the Supreme Court; and

(e) if further evidence is to be put before the Supreme Court—briefly the nature of the evidence and what is sought to be proved; and

(f) briefly, but specifically, the grounds relied on in support of the appeal, including, in particular, any grounds on which it is contended that there is an error of law in the order appealed from.

(6) On the hearing of a cross-appeal, the respondent bringing the cross-appeal must not, without the Supreme Court's leave—

(a) raise any question that is not stated in the notice of cross-appeal; or

(b) rely on any ground in support of—

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(i) the order sought that is not stated in the notice of cross-appeal; or

(ii) the amendment of the order sought that is not stated in the notice of cross-appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

5113 Appeals to Supreme Court—application of certain rules to cross-appeals

(1) The provisions mentioned in subrule (2) apply to a cross-appeal as if—

(a) a reference to an appeal were a reference to a cross-appeal; and

(b) a reference to the appellant were a reference to the respondent bringing the cross-appeal; and

(c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and

(d) any other necessary changes were made.

(2) The provisions applying to a cross-appeal are as follows:

- rule 5054 (Appeals to Supreme Court—stay and reinstatement)
- rule 5055 (Appeals to Supreme Court—security for costs)
- rule 5102 (Appeals to Supreme Court—parties to appeal)
- rule 5104 (Appeals to Supreme Court—notice of appeal to be sealed)
- rule 5107 (2) to (5) (Appeals to Supreme Court—serving notice of appeal)
- rule 5111 (Appeals to Supreme Court—amending notice of appeal)
- division 5.3.6 (Appeals to Supreme Court—ending all or part of appeal).

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5114 Appeals to Supreme Court—effect of failure to give notice of cross-appeal

A failure to give a notice of cross-appeal does not affect the powers of the Supreme Court on the hearing of the appeal, but the court may adjourn the hearing of the appeal.

5115 Appeals to Supreme Court—notice of contention

(1) A respondent need not file a notice of cross-appeal if the respondent—

(a) proposes to contend that a question of fact or law has been incorrectly decided against the respondent but does not seek to have the order appealed from set aside or the order amended; or

(b) wants to contend that the order appealed from should be confirmed on a ground other than the ground relied on by the court or tribunal that made the order.

(2) However, the respondent must—

(a) file a notice of contention in the Supreme Court not later than 28 days after the day the notice of appeal is served on the respondent, or not later than any further time allowed by the Supreme Court; and

Note 1 See approved form 5.6 (Supreme Court—notice of contention) AF2006-390.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time.

(b) serve a stamped copy of the notice of contention, not later than 7 days after the day the notice of contention is filed, but no later than 5 days before the day for settling the appeal papers, unless the Supreme Court otherwise orders, on the following:

(i) each appellant and any other respondent;

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(ii) any other party to the proceeding in which the order appealed from was made who would be directly affected by the order that the respondent seeks; and

(c) give notice to the appellant of the record of evidence or documents before the court or tribunal relevant to the respondent's contention, for inclusion in the appellant's draft index of the appeal papers; and

(d) when the appeal papers are being settled, ask the Supreme Court to include the record of evidence or documents in the appeal papers.

(3) If a party mentioned in subrule (2) (b) (ii) filed a notice of intention to respond or defence (however described) in the court or tribunal that made the order appealed from, or otherwise gave the court or tribunal an address for service (however described), the notice of contention may be served on the party at the party's address for service (however described) in the proceeding in which the order appealed from was made.

(4) Part 6.8 (Service) applies to this rule as if a reference to an address for service were a reference to an address for service mentioned in subrule (3).

Note See in particular r 6420 (Ordinary service—address for service).

(5) The notice of contention must state—

(a) the contention; and

(b) briefly, but specifically, the grounds relied on in support of the contention.

(6) On the hearing of a contention, the respondent making the contention must not, without the Supreme Court's leave—

(a) raise any question that is not stated in the notice of contention; or

(b) rely on any ground in support of—

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(i) the order sought that is not stated in the notice of contention; or

(ii) the amendment of the order sought that is not stated in the notice of contention.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 5.3.5 Appeals to Supreme Court—appeal papers and hearing

5130 Appeals to Supreme Court—draft index of appeal papers

(1) Before the date set for settling the appeal papers, the appellant must prepare and file a draft index of the appeal papers.

(2) The appellant must serve a copy of the draft index on each respondent not later than 3 days before the date set for settling the appeal papers.

5131 Appeals to Supreme Court—settlement of appeal papers

(1) When settling the appeal papers, the registrar of the Supreme Court may give directions about the conduct of the appeal that the registrar considers appropriate.

(2) Without limiting subrule (1), the registrar may do the following:

(a) work out what documents were before the court or tribunal;

(b) decide what documents are to be included in the appeal papers, and the order of inclusion;

(c) settle the index of the documents to be included in the appeal papers;

(d) decide the number of copies of the appeal papers required and when they should be served;

(e) direct the inclusion, substitution or removal of parties;

(f) get an estimate of the length of the hearing from the parties;

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(g) direct the place, date and kind of hearing.

5132 Appeals to Supreme Court—content of appeal papers

(1) The title page of the appeal papers must give—

(a) the title of the proceeding; and

(b) the name of the court or tribunal appealed from; and

(c) the names of each party (and the party's solicitor (if any)) and the party's address for service.

(2) Following the title page of the appeal papers, there must be an index of the documents making up the appeal papers that shows the date and page number of each document.

(3) The documents must be arranged as directed under rule 5131 (2) (b) or, if no direction is given, in the following order:

(a) notice of appeal or, if amended, the amended notice of appeal;

(b) any notice of cross-appeal or notice of contention;

(c) if leave to appeal has been given—the order giving leave;

(d) the formal order of the court or tribunal from which the appeal is brought;

(e) reasons for the order of the court or tribunal;

(f) process and pleading;

(g) evidence, as follows:

(i) the transcript of any oral evidence;

(ii) affidavit evidence;

(iii) other exhibits that are documents (other than affidavits and documents exhibited or attached to each affidavit) arranged in the order in which they have been numbered as exhibits

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in the court or tribunal, and any list of the exhibits appearing in the transcript;

(iv) a list of exhibits that are not documents;

(h) the certificate under rule 5134 (1) (Appeals to Supreme Court—filing and serving appeal papers).

(4) The requirements of this rule are subject to any direction given by the Supreme Court on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction under this rule.

5133 Appeals to Supreme Court—presentation of appeal papers

(1) The appeal papers must be—

(a) paginated; and

(b) clear, legible and securely fastened, but need not be bound or printed.

(2) The registrar must be satisfied about the presentation of the appeal papers.

(3) The requirements of this rule are subject to any direction given by the Supreme Court on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction under this rule.

5134 Appeals to Supreme Court—filing and serving appeal papers

(1) The appellant must file the appeal papers with a certificate, by the parties or their solicitors, stating that the papers have been examined and are correct.

Note See approved form 5.7 (Supreme Court—certificate of examination of appeal papers) AF2006-391.

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(2) The appellant must file the number of copies of the appeal papers, and serve stamped copies of them, as decided under rule 5131 (2) (d) (Appeals to Supreme Court—settlement of appeal papers).

5135 Appeals to Supreme Court—setting appeal for hearing

(1) This rule applies if the registrar of the Supreme Court does not set a date for hearing when the appeal papers are settled under rule 5131 (Appeals to Supreme Court—settlement of appeal papers).

(2) The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.

(3) The registrar may set the date on application to the registrar by any party to the appeal or on the registrar's own initiative.

(4) The registrar must tell the parties the hearing date set for the appeal.

5136 Appeals to Supreme Court—changing appeal hearing date

(1) The Supreme Court may, at any time, order that the appeal be heard on a date other than the date set under rule 5131 (Appeals to Supreme Court—settlement of appeal papers) or rule 5135 (Appeals to Supreme Court—setting appeal for hearing).

(2) The Supreme Court may make an order under subrule (1) on the application of a party to the appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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5137 Appeals to Supreme Court—written summary and list for appeal hearing

(1) Each party to the appeal must prepare a written summary of arguments in accordance with rule 5138 (Appeals to Supreme Court—summaries of arguments) and a list of authorities, legislation and texts in accordance with rule 5139 (Appeals to Supreme Court—list of authorities, legislation and texts), unless the Supreme Court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) At least 5 days before the day set for the start of the hearing of the appeal, each appellant must—

(a) file in the Supreme Court the appellant's summary and list, and serve a copy of each on each other party to the appeal; and

(b) file in the court a copy of each authority and item of legislation mentioned in the list.

(3) At least 2 days before the day set for the start of the hearing of the appeal, each respondent must—

(a) file in the Supreme Court the respondent's summary and list, and serve a copy of each on each other party to the appeal; and

(b) file in the court a copy of each authority and item of legislation mentioned in the list.

(4) At least 1 day before the day set for the start of the hearing of the appeal, each appellant may file in the Supreme Court a written summary of arguments in reply, and serve a copy on each other party to the appeal.

5138 Appeals to Supreme Court—summaries of arguments

(1) A party's summary of arguments must state as briefly as possible—

(a) the issues in the appeal; and

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(b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and

(c) if there is to be a challenge to any of the findings of fact of the court or tribunal—

(i) the claimed error (including any failure to make a finding of fact); and

(ii) the reasons why the party considers the finding was an error; and

(iii) the finding that the party considers should have been made; and

(d) for an appellant—a chronology of the facts; and

(e) if a respondent disagrees with an appellant's chronology of facts—the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.

(2) If the summary relies on a matter in another document, the summary must—

(a) for a document mentioned in rule 5139 (3) (a) to (c)—identify the document as mentioned in the paragraphs; and

(b) for other documents—if relevant, identify the page of the document relied on.

5139 Appeals to Supreme Court—list of authorities, legislation and texts

(1) A party's list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.

(2) A party's list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text—

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(a) in part A—that the party expects will be quoted from by the party; and

(b) in part B—that may be referred to by the party.

(3) An authority, legislation or text must be identified as follows:

(a) for an authority—by case, citation and relevant part;

(b) for legislation—by provision;

(c) for a text—by edition and page number.

5140 Appeals to Supreme Court—absence of party

(1) If a party is not present when the appeal is called on for hearing, the Supreme Court may—

(a) order that the hearing not proceed unless a hearing date is again set for the appeal or the other steps directed by the court are taken; or

(b) adjourn the hearing; or

(c) if the absent party is an appellant or cross-appellant—dismiss the appeal or cross-appeal; or

(d) proceed with the hearing, either generally or in relation to the order sought in the appeal; or

(e) for an appeal against a conviction or sentence mentioned in the *Magistrates Court Act 1930*, section 208 (Appeals to which div 3.10.2 applies), and the absent party is the appellant who is on bail and is not represented by a legal practitioner—make another order the court considers appropriate or issue a warrant for the appellant's arrest.

(2) The Supreme Court may make an order, or do anything else, mentioned in subrule (1) on application by a party to the appeal or on its own initiative.

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Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(3) If the appeal or cross-appeal is dismissed under subrule (1) (c), and the Supreme Court considers there are special circumstances to set aside the dismissal, the Court may, on application by the appellant or cross-appellant—

(a) set aside the dismissal; and

(b) give directions for the further conduct of the appeal.

(4) If the hearing proceeds under subrule (1) (d) in the absence of the party and an order is made, the Supreme Court may, on application by the party—

(a) amend or set aside the order; and

(b) give directions for the further conduct of the appeal.

5141 Appeals to Supreme Court—insufficient material

If the Supreme Court considers that it has insufficient material before it to enable it to make a decision on the appeal, it may give all or any of the following directions:

(a) that the appeal be adjourned for further consideration;

(b) a direction about the issues to be decided that it considers appropriate;

(c) a direction about the accounts to be taken, or inquiries made, that it considers appropriate.

Division 5.3.6 Appeals to Supreme Court—ending all or part of appeal

Note to div 5.3.6

See also r 5140 (Appeals to Supreme Court—absence of party).

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5170 Appeals to Supreme Court—abandonment of ground of appeal

(1) This rule applies if an appellant wants to abandon a ground of appeal.

(2) The appellant must give notice to each other party to the appeal that the ground of appeal will not be relied on.

(3) The notice must be given—

(a) as soon as possible; but

(b) if the appeal is not to be decided by written cases under part 5.8 (Written cases)—within a reasonable time before the day set for the start of the hearing.

(4) The Supreme Court may make any order the court considers appropriate in an appeal in a civil proceeding in relation to costs incurred because of a failure by the appellant to comply with this rule.

5171 Appeals to Supreme Court—discontinuance of appeal

(1) An appellant may discontinue the appeal or a part of the appeal—

(a) without the Supreme Court's leave, at any time before the hearing of the appeal; or

(b) only with the Supreme Court's leave, at the hearing or after the hearing and before judgment.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(2) However, if the appeal is an appeal in a criminal proceeding from an order of the Magistrates Court by an appellant other than the director of public prosecutions, the appeal may be discontinued before the hearing of the appeal only with—

(a) the agreement of the director of public prosecutions; or

(b) the leave of the Supreme Court.

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Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(3) Also, if the appeal is to be decided by written cases under part 5.8 (Written cases), an appellant may discontinue the appeal or a part of the appeal—

(a) without the Supreme Court's leave, at any time before, or on, the last day that the appellant may file written submissions under rule 5856 (3) (Written cases—filing etc written case for appeal); or

(b) only with the Supreme Court's leave, at any time after the last day mentioned in paragraph (a), but before judgment.

(4) The appellant may discontinue the appeal by filing a notice of discontinuance in the Supreme Court, and serving a stamped copy of the notice on each party to the appeal.

Note See approved form 5.8 (Supreme Court—notice of discontinuance of appeal) AF2006-392.

(5) If the appeal or a part of the appeal is discontinued—

(a) the appeal or part of the appeal is abandoned by the appellant; and

(b) the discontinuance does not affect any other appellant in the appeal.

(6) If an appeal in a criminal proceeding from an order of the Magistrates Court by an appellant other than the director of public prosecutions is discontinued, the court may make any order it could make under the *Magistrates Court Act 1930*, section 218 that is appropriate to deal with the effect of the discontinuance on the stay under that Act, section 216.

(7) If the appeal or part of the appeal is discontinued in a civil proceeding, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal discontinued, unless the Supreme Court otherwise orders.

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(8) The Supreme Court may make an order under subrule (7) on application by a party to the appeal or on its own initiative.

5172 Appeals to Supreme Court—competency of appeal

(1) A respondent to the appeal may apply to the Supreme Court at any time for an order striking out the appeal as incompetent.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The burden of establishing the competency of the appeal is on the appellant.

5173 Appeals to Supreme Court—costs for failure to apply for appeal to be struck out as incompetent

(1) This rule applies if a respondent to the appeal does not make an application under rule 5172 (1) and the appeal is struck out by the Supreme Court as incompetent.

(2) The respondent must not receive any costs of the appeal, unless the Supreme Court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The Supreme Court may order that the respondent pay the appellant any costs of the appeal wasted because of the respondent's failure to make an application under rule 5172 (1).

(4) The Supreme Court may make an order under this rule on application by a party to the appeal or on its own initiative.

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5174 Appeals to Supreme Court—dismissal by consent

(1) The parties to the appeal may agree that the appeal be dismissed by consent.

(2) Rule 1612 (Orders—by consent in proceeding) applies, with any necessary changes, to an order for the dismissal of the appeal by consent.

(3) Without limiting subrule (2), the order may provide that—

(a) an amount secured for the costs of the appeal be paid to a party stated in the order; or

(b) the appellant pay the respondent's costs of the appeal to be assessed; or

(c) the appellant pay the respondent's costs of the appeal agreed as a stated amount; or

(d) the appellant pay the respondent's costs of the appeal, to be satisfied from an amount secured for the costs of the appeal with any balance to be paid to a stated party or the party's solicitor; or

(e) there be no order for the costs of the appeal.

(4) Unless the Supreme Court otherwise orders in relation to an amount secured for the costs of the appeal, on the dismissal of the appeal, the registrar of the Supreme Court may pay the amount to the successful respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(5) The payment may be made to the solicitor on the record for the respondent.

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5175 Appeals to Supreme Court—consent orders

If the parties agree about the substantive orders the Supreme Court will be asked to make by consent, but do not agree about the order for costs, the appeal may be listed for hearing even though the appeal papers have not been settled.

Division 5.3.7 Appeals to Supreme Court—miscellaneous

5190 Appeals to Supreme Court—directions about appeal etc

(1) At any time after the filing in the Supreme Court of a notice of appeal or application for leave to appeal (or leave to appeal out of time) under this part, the court may give directions in relation to the conduct of the appeal or application (including, for the application, the appeal if the leave is given), even though the direction may be inconsistent with another provision of these rules.

(2) A direction under this rule may be made on application by a party to the appeal or application or on the court's own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions or to amend or revoke a direction.

(3) In deciding whether to give a direction under this rule, the interests of justice are paramount.

(4) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.

(5) The court may at any time amend or revoke a direction made under this rule on application by a party or on its own initiative.

(6) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

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5191 Appeals to Supreme Court—want of prosecution of appeal

(1) In this rule:

appeal means—

(a) an application for further time to apply for leave to appeal under this part; or

(b) an appeal or application for leave to appeal (or leave to appeal out of time) under this part.

appellant means—

(a) a person applying for further time to apply for leave to appeal under this part; or

(b) an applicant for leave to appeal (or leave to appeal out of time) under this part; or

(c) a person appealing under this part.

(2) This rule applies if an appellant—

(a) has not done anything required to be done under these rules during a period of 3 months after the day the requirement arises; or

(b) otherwise has not prosecuted the appellant's appeal with appropriate effort during a period of 3 months after the day the last step in the proceeding was taken.

(3) The Supreme Court may—

(a) order that the appeal be dismissed for want of prosecution and confirm the order appealed from; or

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(b) on its own initiative, set a time for the doing of a thing required to be done in relation to the appeal and—

(i) at the same time order that, if the appellant does not do the thing within the time, the appeal will be dismissed for want of prosecution and the order appealed from confirmed; or

(ii) if the appellant does not do the thing within the time—order that the appeal be dismissed for want of prosecution and confirm the order appealed from; or

(c) make any other order the Supreme Court considers just.

(4) A respondent may apply to the Supreme Court to require the appellant to show cause why the appeal should not be dismissed for want of prosecution.

Note Pt 6.2 (Applications in proceedings) applies to an application under this subrule.

(5) On the hearing of the application, the Supreme Court may make an order mentioned in subrule (3).

(6) An order mentioned in subrule (3) (b) may be amended at any time before the appeal is dismissed for want of prosecution and, in special circumstances, may be amended or revoked after that time.

5192 Appeals to Supreme Court—matter happening in court or tribunal appealed from

(1) In an appeal or application to the Supreme Court under this part, if a question arises about something that happened or may have happened in the court or tribunal that made the order appealed from (or sought to be appealed from), the Supreme Court may have regard to the material it considers appropriate.

(2) Without limiting subrule (1), the Supreme Court may—

(a) call for a report from the court or tribunal; and

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(b) if the contents of the report have been made available to the parties to the appeal—act on the report.

5193 Further evidence on appeal to Supreme Court—Magistrates Court Act 1930, s 214

(1) This rule applies to an application to the Supreme Court to receive evidence mentioned in the *Magistrates Court Act 1930*, section 214 (3) and (4) in an appeal mentioned in that section.

Note Pt 6.2 (Applications in proceedings) applies to the application and an application for an order under this rule.

(2) The application must be supported by an affidavit stating—

(a) the grounds of the application; and

(b) any evidence necessary to establish the grounds of the application; and

(c) the evidence that the applicant wants the Supreme Court to receive.

(3) Not later than 21 days before the day set for the hearing of the appeal, the applicant must file the affidavit in the Supreme Court and serve a stamped copy on the other party to the appeal.

(4) Unless the Supreme Court otherwise orders, the evidence of the other party to the appeal must be given by affidavit.

(5) Not later than 14 days before the day set for the hearing of the appeal, the other party to the appeal must file the affidavit in the Supreme Court and serve a stamped copy on the applicant.

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5194 Appeals to Supreme Court—keeping exhibits

(1) This rule applies in relation to an appeal or application to the Supreme Court under this part.

(2) Unless the Supreme Court otherwise orders, the registrar of the Supreme Court must keep the exhibits in the proceeding until 28 days after the day the appeal is disposed of.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(3) However, the register may permit a document or thing to be removed from the registry in accordance with rule 6767 (Power to allow removal of documents and things).

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Part 5.4 Appeals to Court of Appeal

Division 5.4.1 Appeals to Court of Appeal—preliminary

5300A Definitions—pt 5.4

In this part:

practice direction means Practice Direction No 1 of 2016 made by the court.

supporting material, for an application, means the supporting material for the application mentioned in the practice direction.

5300 Meaning of *court*—pt 5.4

(1) In this part, the ***court*** is the Supreme Court otherwise than when it is the Court of Appeal.

(2) Also, the ***court*** includes the associate judge.

(3) However, the ***court*** does not include—

(a) a Full Court of the Supreme Court exercising appellate jurisdiction; or

(b) the registrar.

5301 Appeals to Court of Appeal—stay and reinstatement

(1) An appeal to the Court of Appeal in a civil proceeding does not operate as a stay of the order appealed from unless—

(a) a territory law provides otherwise; or

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

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(b) the Court of Appeal or the court otherwise orders.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for a stay or for an order under this rule.

Note 2 An appeal to the Court of Appeal in a criminal proceeding does not operate as a stay of the conviction appealed from.

(2) In an urgent case, an application to the Court of Appeal or the court for a stay may be made without serving it on anyone.

(3) If the application to the Court of Appeal or the court for a stay is made without serving it on anyone, the application must be accompanied by an affidavit setting out the grounds relied on in support of the claim of urgency.

(4) If the order appealed from is stayed by the Court of Appeal or the court, the Court of Appeal or the court may make any order that it considers necessary or desirable to give effect to the stay.

(5) The Court of Appeal may, by order, amend or set aside an order made by the court or it under this rule.

(6) The court may, by order, amend or set aside an order made by it under this rule.

(7) An application for an order of the Court of Appeal for a stay may be made whether or not a similar application has been made to the court.

(8) If any step has been taken for the enforcement of an order and the Court of Appeal amends or sets aside the order on appeal under this part, the Court of Appeal may make the orders for reinstatement it considers appropriate.

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5302 Appeals to Court of Appeal—security for costs

(1) Security for costs of an appeal is not required, unless the Court of Appeal otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) This rule does not limit division 2.17.8 (Security for costs).

Division 5.4.2 Appeals to Court of Appeal—leave to appeal from interlocutory orders

5310 Application—div 5.4.2

(1) This division applies if a person wants to appeal to the Court of Appeal from an interlocutory order of the court constituted by a single judge, or by the associate judge.

Note Pt 5.2 deals with appeals from all orders of the registrar of the Supreme Court.

(2) The person must make an application for leave to appeal under this division.

5311 Appeals to Court of Appeal—application for leave to appeal

(1) The application for leave to appeal must comply with this division.

Note 1 The application for leave must also comply with the practice direction.

Note 2 See approved form 5.9 (Court of appeal—application for leave to appeal from interlocutory judgment) AF2015-36.

Note 3 The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

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(2) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5312 Appeals to Court of Appeal—time for filing application for leave to appeal

The applicant for leave to appeal must file the application for leave to appeal, and supporting material for the application, in the court not later than 7 days after the day the interlocutory order is given, or not later than any further time allowed by the Court of Appeal or the judge who gave the interlocutory order.

Note 1 See r 5405 (Appeals to Court of Appeal—time for filing notice of appeal).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time to apply for leave to appeal.

Note 3 An application for further time may be made before or after the time mentioned in this rule (see Legislation Act, s 151C).

5313 Appeals to Court of Appeal—application for leave to appeal to be sealed

The registrar must seal the original and filed copies of an application for leave to appeal.

Note The registrar may reject an application for leave to appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5314 Appeals to Court of Appeal—serving application for leave to appeal

(1) The applicant for leave to appeal must, not later than 3 days after the day the application is filed, serve the following on each person who was a party to, or given leave to intervene in, the proceeding in which the order appealed from was made:

(a) a sealed copy of the application;

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(b) a stamped copy of the supporting material for the application.

(2) The documents mentioned in subrule (1) must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) on the person at the person's address for service in the proceeding in which the interlocutory order appealed from was given.

Note 1 ***Address for service*** is defined in the dictionary.

Note 2 See r 6420 (Ordinary service—address for service).

5315 Appeals to Court of Appeal—response to application for leave to appeal

A respondent to the application for leave to appeal must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

Note The respondent must file and serve any material in response to the application within 14 days after service of the application on the respondent (see the practice direction).

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Division 5.4.3 Appeals to Court of Appeal—leave to appeal out of time from final judgments

5330 Definitions—div 5.4.3

In this division:

final judgment, of the court, means a judgment of the court that is not an interlocutory judgment, but does not include a conviction or sentence.

Note ***Conviction*** and ***sentence*** are defined in r 5000 (Definitions—ch 5).

out of time, for a final judgment of the court, means more than 28 days after the day the judgment was given by the court.

5331 Application—div 5.4.3

(1) This division applies if a person wants to appeal out of time to the Court of Appeal from a final judgment of the court.

Note For leave to appeal out of time from a conviction or sentence, see sdiv 5.4.7.2 (Appeals to Court of Appeal—leave to appeal out of time by convicted person) and sdiv 5.4.7.3 (Appeals to Court of Appeal—leave to appeal out of time by DPP).

(2) The person must make an application for leave to appeal out of time under this division.

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5332 Appeals to Court of Appeal—application for leave to appeal out of time

(1) The application for leave to appeal out of time must comply with this division.

Note 1 The application for leave must also comply with the practice direction.

Note 2 See approved form 5.10 (Court of Appeal—application for leave to appeal out of time from final judgment) AF2015-40.

Note 3 The application must be in accordance with pt 6.2 (Applications in proceedings) for matters not dealt with in this division.

(2) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5333 Appeals to Court of Appeal—filing application for leave to appeal out of time

The applicant for leave to appeal out of time must file the application for leave to appeal out of time, and supporting material for the application, in the court.

Note For when the application for leave to appeal out of time must be filed, see r 5405 (1) (b) (Appeals to Court of Appeal—time for filing notice of appeal).

5334 Appeals to Court of Appeal—application for leave to appeal out of time to be sealed

The registrar must seal the original and filed copies of an application for leave to appeal out of time.

Note The registrar may reject an application for leave to appeal out of time that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

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5335 Appeals to Court of Appeal—serving application for leave to appeal out of time

(1) The applicant for leave to appeal out of time must, not later than 3 days after the day the application is filed, serve the following on each person who was a party to, or given leave to intervene in, the proceeding in which the final judgment appealed from was given:

(a) a sealed copy of the application;

(b) a stamped copy of the supporting material for the application.

(2) The documents mentioned in subrule (1) must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) on the person at the person's address for service in the proceeding in which the final judgment appealed from was given.

Note 1 ***Address for service*** is defined in the dictionary.

Note 2 See r 6420 (Ordinary service—address for service).

5336 Appeals to Court of Appeal—response to application for leave to appeal out of time

A respondent to the application for leave to appeal out of time must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

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(d) any other necessary changes were made.

Note The respondent must file and serve any material in response to the application within 14 days after service of the application on the respondent (see the practice direction).

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Division 5.4.4 Appeals to Court of Appeal—procedure generally

Note to div 5.4.4

See also sdiv 5.4.7.4 (Appeals to Court of Appeal—convictions and sentences generally).

5400 Definitions—divs 5.4.4 to 5.4.6

(1) In this division, division 5.4.5 (Appeals to Court of Appeal—appeal papers and hearing) and division 5.4.6 (Appeals to Court of Appeal—ending all or part of appeal):

appeal means an appeal from an order of the court.

order includes—

(a) a conviction of the court; or

(b) a sentence of the court.

Note 1 ***Order*** is defined in the dictionary.

Note 2 ***Conviction*** and ***sentence*** are defined in r 5000 (Definitions—ch 5).

(2) However, an ***appeal*** does not include—

(a) a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal; or

Note See div 5.7.2 (Questions referred—Court of Appeal).

(b) an appeal under the *Supreme Court Act 1933*, section 37S (Reference appeal following acquittal on indictment).

Note See div 5.6.2 (Reference appeals—Court of Appeal).

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5400A Meaning of *case summary*—div 5.4.4

In this division:

case summary—

(a) for an appeal—see rule 5403 (2); and

(b) for a cross-appeal—see rule 5413 (4).

5401 Application—divs 5.4.4 to 5.4.6

(1) This division, division 5.4.5 and division 5.4.6 apply to an appeal to the Court of Appeal.

(2) The divisions apply subject to any territory law applying to the appeal.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

5402 Appeals to Court of Appeal—starting appeal

An appeal may be started in the Court of Appeal by filing a notice of appeal in the court.

Note See approved form 5.11 (Court of Appeal—notice of appeal) AF2016-104.

5403 Appeals to Court of Appeal—requirements for notice of appeal etc

(1) The notice of appeal to the Court of Appeal must state—

(a) the order appealed from and the date of the order; and

(b) whether the appeal is from all or part of the order; and

(c) if the appeal is from part of the order—the part appealed from; and

(d) whether the appellant will seek to put further evidence before the court; and

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(e) if further evidence is to be put before the court—briefly the nature of the evidence and what is sought to be proved; and

(f) briefly, but specifically, the grounds relied on in support of the appeal, including, in particular, any grounds on which it is claimed that there is an error of law in the order; and

(g) the order sought.

(2) The notice of appeal must be accompanied by a 1-paragraph (about 250 words) summary (the ***case summary***) of—

(a) the proceeding in which the order appealed from was made; and

(b) the order appealed from; and

(c) the grounds relied on in support of the appeal.

(3) If the appeal is brought by leave of the Court of Appeal—

(a) the notice of appeal must state that the appeal is brought by leave; and

(b) a sealed copy of the order giving leave to appeal must be attached to the notice of appeal and every copy of the notice of appeal served under rule 5409 (Appeals to Court of Appeal—serving notice of appeal and case summary).

(4) If the appellant wants to present the appellant's case in writing under part 5.8 (Written cases), the notice of appeal must state that the appellant wants to do so.

(5) If there is a respondent to the appeal, the notice of appeal must include an instruction that before taking any other step in the proceeding the respondent must file in the court a notice of intention to respond (unless the respondent filed a notice of intention to respond to an application for leave to appeal from an interlocutory order, or for leave to appeal out of time from a final judgment, in the proceeding, and the information provided in the notice has not changed).

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(6) On the hearing of the appeal, the appellant must not, without the Court of Appeal's leave—

(a) raise any question that is not stated in the notice of appeal; or

(b) rely on any ground in support of the order sought that is not stated in the notice of appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

5404 Appeals to Court of Appeal—parties to appeal

(1) Each party to the proceeding in which the order appealed from was made (the ***original proceeding***) must be joined as an appellant or respondent to the appeal if the party is directly affected by the order sought by the notice of appeal or is interested in maintaining the order appealed from.

(2) The Court of Appeal may order that—

(a) a person (whether or not a party to the original proceeding) be included or removed as a party to the appeal; or

(b) a person directly affected by the appeal be included or substituted as a party.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) However, a person may be made an appellant only with the person's consent.

(4) If the Court of Appeal orders the inclusion or substitution of someone as a party to the appeal, it may adjourn the hearing of the appeal and make any order it considers appropriate about the conduct of the appeal.

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5405 Appeals to Court of Appeal—time for filing notice of appeal and case summary

(1) The notice of appeal and case summary must be filed in the court—

(a) if leave to appeal has been given—

(i) not later than 7 days after the day leave to appeal is given, or not later than any further time allowed by the Court of Appeal on application filed in the court before the end of the 7-day period; or

(ii) if the Court of Appeal sets a time for the filing when giving leave to appeal—not later than the time set, or not later than any further time allowed by the Court of Appeal on application filed in the court before the end of the time set; or

Note Pt 6.2 (Applications in proceedings) applies to an application for further time.

(b) in any other case—not later than 28 days after the day the order appealed from was made, or not later than any further time the Supreme Court allows on application filed in the court before the end of the 28-day period.

Note Div 5.4.3 (Appeals to Court of Appeal—leave to appeal out of time from final judgments) applies to an application for further time.

(2) However, the Court of Appeal may, at any time and for special reasons, give leave to file a notice of appeal and case summary.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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5406 Appeals to Court of Appeal—notice of appeal to be sealed

The registrar must seal the original and filed copies of the notice of appeal.

Note The registrar may reject a notice of appeal that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5407 Appeals to Court of Appeal——numbering etc of appeals

(1) When the notice of appeal is sealed, the registrar must give a distinguishing number or other unique identifier to the appeal started by the notice.

(2) The registrar must ensure that the original and each copy sealed under rule 5406 is endorsed with—

(a) the distinguishing number or other unique identifier given to the appeal; and

(b) the date when the notice was filed in the court.

5408 Appeals to Court of Appeal—date for settlement of appeal papers

The registrar must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

5409 Appeals to Court of Appeal—serving notice of appeal and case summary

(1) The appellant must serve on each respondent—

(a) a sealed copy of the notice of appeal; and

(b) a stamped copy of the case summary.

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(2) The notice of appeal and case summary must be served—

(a) personally; or

Note See r 6405 (How document is personally served). A number of rules provide that particular kinds of non-personal service are taken to be personal service eg r 6431 (Service on corporations—generally). Also, service may be done in another way eg by substituted service (see r 6460 (Substituted service)).

(b) on a respondent at the respondent's address for service in the proceeding in which the order appealed from was made.

Note 1 ***Address for service*** is defined in the dictionary.

Note 2 See r 6420 (Ordinary service—address for service).

(3) However, if the appeal is from an order refusing an application made without notice, the notice of appeal and case summary need not be served on anyone unless the Court of Appeal otherwise orders on application by an interested person or on its own initiative.

(4) On application by a party to the appeal or on its own initiative, the Court of Appeal may order the appellant to serve the notice of appeal and case summary on anyone else.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) The appellant must serve the notice of appeal under subrule (1) not later than 7 days after the day the notice is filed, but no later than 5 days before the day for settling the appeal papers, unless the Court of Appeal otherwise orders.

(6) If the Court of Appeal makes an order under subrule (5), the registrar must make a note of the order on the notice of appeal.

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5410 Appeals to Court of Appeal—notice of intention to respond

(1) A respondent to the appeal must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the notice of appeal were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

(2) However, this rule does not apply to a respondent if the respondent filed a notice of intention to respond under rule 5315 (Appeals to Court of Appeal—response to application for leave to appeal) or rule 5335 (Appeals to Court of Appeal—notice of intention to respond to application for leave to appeal out of time) in the proceeding, and the information provided in the notice has not changed.

5411 Appeals to Court of Appeal—respondent taken to be served by filing notice of intention to respond

(1) This rule applies to a respondent to the appeal if—

(a) the respondent is represented by a solicitor; and

(b) the respondent has not been served with the notice of appeal for the appeal, but files a notice of intention to respond (other than a conditional notice of intention to respond).

(2) The respondent is taken to have been served with the notice of appeal on the day the respondent files the notice of intention to respond.

5412 Appeals to Court of Appeal—amending notice of appeal

(1) Before the appeal papers are settled, the appellant may amend the notice of appeal without the Court of Appeal's leave.

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(2) After the appeal papers are settled, the appellant may amend the notice of appeal only with the Court of Appeal's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) The provisions of part 2.7 (Amendment) mentioned in subrule (4) apply to an amendment of the notice of appeal as if—

(a) the notice of appeal were a pleading; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff; and

(d) any other necessary changes were made.

(4) The provisions of part 2.7 applying to an amendment of the notice of appeal are the following:

- rule 502 (Amendment—of documents)
- rule 508 (Amendment—when leave to amend ceases to have effect)
- rule 509 (Amendment—procedure)
- rule 510 (Amendment—person required to make)
- rule 511 (Amendment—service of amended or revised document etc)
- for an appeal in a civil proceeding—rule 513 (Amendment—costs).

5413 Appeals to Court of Appeal—cross-appeal

(1) If a respondent wants to appeal from all or part of the order appealed from, or wants an amendment of the order, the respondent need not start a substantive appeal.

(2) However, the respondent must—

(a) file a notice of cross-appeal in the court not later than 28 days after the day the notice of appeal is served on the respondent, or

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not later than any further time allowed by the Court of Appeal; and

(b) serve a sealed copy of the notice of cross-appeal, not later than 7 days after the day the notice of cross-appeal is filed, but no later than 5 days before the day for settling the appeal papers, unless the Court of Appeal otherwise orders, on the following:

(i) each appellant and any other respondent;

(ii) any other party to the proceeding in which the order appealed from was made who would be directly affected by the order that the respondent seeks.

Note 1 See approved form 5.12 (Court of Appeal—notice of cross-appeal) AF2015-56.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time.

Note 3 For the use of a notice of contention instead of a notice of cross-appeal, see r 5416.

(3) The notice of cross-appeal must state—

(a) whether the appeal is from all or part of the order or seeks an amendment of the order; and

(b) if the appeal is from part of the order or seeks an amendment of the order—the part the respondent cross-appeals from; and

(c) either—

(i) the order that the respondent seeks instead of the order cross-appealed; or

(ii) the amendment of the order that the respondent seeks; and

(d) whether the respondent will seek to put further evidence before the Court of Appeal; and

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(e) if further evidence is to be put before the Court of Appeal—briefly the nature of the evidence and what is sought to be proved; and

(f) briefly, but specifically, the grounds relied on in support of the appeal, including, in particular, any grounds on which it is contended that there is an error of law in the order appealed from.

(4) The notice of cross-appeal must be accompanied by a 1-paragraph (about 250 words) summary (the ***case summary***) of—

(a) the order appealed from; and

(b) the grounds relied on in support of the appeal.

(5) On the hearing of a cross-appeal, the respondent bringing the cross-appeal must not, without the Court of Appeal's leave—

(a) raise any question that is not stated in the notice of cross-appeal; or

(b) rely on any ground in support of—

(i) the order sought that is not stated in the notice of cross-appeal; or

(ii) the amendment of the order sought that is not stated in the notice of cross-appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

5414 Appeals to Court of Appeal—application of certain rules to cross-appeals

(1) The provisions mentioned in subrule (2) apply to a cross-appeal as if—

(a) a reference to an appeal were a reference to a cross-appeal; and

(b) a reference to the appellant were a reference to the respondent bringing the cross-appeal; and

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(c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and

(d) any other necessary changes were made.

(2) The provisions applying to a cross-appeal are as follows:

- rule 5301 (Appeals to Court of Appeal—stay and reinstatement)
- rule 5302 (Appeals to Court of Appeal—security for costs)
- rule 5404 (Appeals to Court of Appeal—parties to appeal)
- rule 5406 (Appeals to Court of Appeal—notice of appeal to be sealed)
- rule 5409 (2) to (6) (Appeals to Court of Appeal—serving notice of appeal and case summary)
- rule 5412 (Appeals to Court of Appeal—amending notice of appeal)
- division 5.4.6 (Appeals to Court of Appeal—ending all or part of appeal).

5415 Appeals to Court of Appeal—effect of failure to give notice of cross-appeal

A failure to give a notice of cross-appeal does not affect the powers of the Court of Appeal on the hearing of the appeal, but the court may adjourn the hearing of the appeal.

5416 Appeals to Court of Appeal—notice of contention

(1) A respondent need not file a notice of cross-appeal if the respondent—

(a) proposes to contend that a question of fact or law has been incorrectly decided against the respondent but does not seek to have the order appealed from set aside or the order amended; or

(b) wants to contend that the order appealed from should be confirmed on a ground other than the ground relied on by the court.

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(2) However, the respondent must—

(a) file a notice of contention in the court not later than 28 days after the day the notice of appeal is served on the respondent, or not later than any further time allowed by the Court of Appeal; and

Note 1 See approved form 5.13 (Court of Appeal—notice of contention) AF2015-57.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for further time.

(b) serve a stamped copy of the notice of contention, not later than 7 days after the day the notice of contention is filed, but no later than 5 days before the day for settling the appeal papers, unless the Court of Appeal otherwise orders, on the following:

(i) each appellant and any other respondent;

(ii) any other party to the proceeding in which the order appealed from was made who would be directly affected by the order that the respondent seeks; and

(c) give notice to the appellant of the record of evidence or documents before the court relevant to the respondent's contention, for inclusion in the appellant's draft index of the appeal papers; and

(d) when the appeal papers are being settled, ask the Court of Appeal to include the record of evidence or documents in the appeal papers.

(3) The notice of contention must state—

(a) the contention; and

(b) briefly, but specifically, the grounds relied on in support of the contention.

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(4) On the hearing of a contention, the respondent making the contention must not, without the Court of Appeal's leave—

(a) raise any question that is not stated in the notice of contention; or

(b) rely on any ground in support of—

(i) the order sought that is not stated in the notice of contention; or

(ii) the amendment of the order sought that is not stated in the notice of contention.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

Division 5.4.5 Appeals to Court of Appeal—appeal papers and hearing

Notes to div 5.4.5

Note 1 The practice direction sets out the requirements for filing documents, including the draft index of the appeal papers, before the date set for settling the appeal papers.

Note 2 ***Appeal*** and ***order*** are defined for this div in r 5400.

5432 Appeals to Court of Appeal—settlement of appeal papers

(1) When settling the appeal papers, the Court of Appeal may give directions about the conduct of the appeal that the court considers appropriate.

(2) Without limiting subrule (1), the Court of Appeal may do the following:

(a) work out what documents were before the judicial officer of the court who gave the order appealed from;

(b) decide what documents are to be included in the appeal papers, and the order of inclusion;

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(c) settle the index of the documents to be included in the appeal papers;

(d) decide the number of copies of the appeal papers required and when they should be served;

(e) direct the inclusion, substitution or removal of parties;

(f) get an estimate of the length of the hearing from the parties;

(g) direct the place, date and kind of hearing;

(h) direct that the appeal be referred to mediation.

5436 Appeals to Court of Appeal—setting appeal for hearing

(1) This rule applies if the Court of Appeal does not set a date for hearing when the appeal papers are settled under rule 5432 (Appeals to Court of Appeal—settlement of appeal papers).

(2) The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.

(3) The registrar may set the date on application by any party to the appeal or on the registrar's own initiative.

(4) The registrar must tell the parties the hearing date set for the appeal.

5437 Appeals to Court of Appeal—changing appeal hearing date

(1) The Court of Appeal may, at any time, order that the appeal be heard on a date other than that set under rule 5432 (Appeals to Court of Appeal—settlement of appeal papers) or rule 5436 (Appeals to Court of Appeal—setting appeal for hearing).

(2) The Court of Appeal may make an order under subrule (1) on the application of a party to the appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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5441 Appeals to Court of Appeal—absence of party

(1) If a party is not present when the appeal is called on for hearing, the Court of Appeal may—

(a) order that the hearing not proceed unless a hearing date is again set for the appeal or the other steps directed by the Court of Appeal are taken; or

(b) adjourn the hearing; or

(c) if the absent party is an appellant or cross-appellant—dismiss the appeal or cross-appeal; or

(d) proceed with the hearing, either generally or in relation to the decision sought in the appeal; or

(e) for an appeal against conviction or sentence, and the absent party is the appellant who is on bail and is not represented by a legal practitioner—make another order the court considers appropriate or issue a warrant for the appellant's arrest.

(2) The Court of Appeal may make an order, or do anything else, mentioned in subrule (1) on application by a party to the appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(3) If the appeal or cross-appeal is dismissed under subrule (1) (c), and the Supreme Court considers there are special circumstances to set aside the dismissal, the Court may, on application by the appellant or cross-appellant—

(a) set aside the dismissal; and

(b) give directions for the further conduct of the appeal.

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(4) If the hearing proceeds under subrule (1) (d) in the absence of the party and an order is made, the Supreme Court may, on application by the party—

(a) amend or set aside the order; and

(b) give directions for the further conduct of the appeal.

5442 Appeals to Court of Appeal—insufficient material

If the Court of Appeal considers that it has insufficient material before it to enable it to make a decision on the appeal, it may give all or any of the following directions:

(a) that the appeal be adjourned for further consideration;

(b) a direction about the issues to be decided that it considers appropriate;

(c) a direction about the accounts to be taken, or inquiries made, that it considers appropriate.

Division 5.4.6 Appeals to Court of Appeal—ending all or part of appeal

Note to div 5.4.6

Appeal and ***order*** are defined for this div in r 5400. See also r 5441 (Appeals to Court of Appeal—absence of party).

5470 Appeals to Court of Appeal—abandonment of ground of appeal

(1) This rule applies if an appellant wants to abandon a ground of appeal.

(2) The appellant must give notice to each other party to the appeal that the ground of appeal will not be relied on.

(3) The notice must be given—

(a) as soon as possible; but

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(b) if the appeal is not to be decided by written cases under part 5.8 (Written cases)—within a reasonable time before the day set for the start of the hearing.

(4) The Court of Appeal may make any order the court considers appropriate in an appeal in a civil proceeding in relation to costs incurred because of a failure by the appellant to comply with this rule.

5471 Appeals to Court of Appeal—discontinuance of appeal

(1) An appellant may discontinue the appeal or part of the appeal—

(a) without the Court of Appeal's leave, at any time before the hearing of the appeal; or

(b) only with the Court of Appeal's leave, at the hearing, or after the hearing and before judgment.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(2) However, if the appeal is to be decided by written cases under part 5.8 (Written cases), an appellant may discontinue the appeal or a part of the appeal—

(a) without the Court of Appeal's leave, at any time before, or on, the last day that the appellant may file written submissions under rule 5856 (3) (Written cases—filing etc written case for appeal); or

(b) only with the Court of Appeal's leave, at any time after the last day mentioned in paragraph (a), but before judgment.

(3) The appellant may discontinue the appeal by filing a notice of discontinuance in the court, and serving a stamped copy of the notice on each party to the appeal.

Note See approved form 5.15 (Court of Appeal—notice of discontinuance) AF2015-59.

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(4) If the appeal or a part of the appeal is discontinued—

(a) the appeal or part of the appeal is abandoned by the appellant; and

(b) the discontinuance does not affect any other appellant in the appeal.

(5) If the appeal or a part of the appeal is discontinued in a civil proceeding, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal discontinued, unless the Court of Appeal otherwise orders.

(6) The Court of Appeal may make an order under subrule (5) on application by a party to the appeal or on its own initiative.

5472 Appeals to Court of Appeal—competency of appeal

(1) A respondent to the appeal may apply to the Court of Appeal at any time for an order striking out the appeal as incompetent.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The burden of establishing the competency of the appeal is on the appellant.

5473 Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent

(1) This rule applies if a respondent to the appeal does not make an application under rule 5472 (1) and the appeal is struck out by the Court of Appeal as incompetent.

(2) The respondent must not receive any costs of the appeal, unless the Court of Appeal otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) The Court of Appeal may order that the respondent pay the appellant any costs of the appeal wasted because of the respondent's failure to make an application under rule 5472 (1).

(4) The Court of Appeal may make an order under this rule on application by a party to the appeal or on its own initiative.

5474 Appeals to Court of Appeal—dismissal by consent

(1) The parties to the appeal may agree that the appeal be dismissed by consent.

(2) Rule 1612 (Orders—by consent in proceeding) applies, with any necessary changes, to an order for the dismissal of the appeal by consent.

(3) Without limiting subrule (2), the order may provide that—

(a) an amount secured for the costs of the appeal be paid to a party stated in the order; or

(b) the appellant pay the respondent's costs of the appeal to be assessed; or

(c) the appellant pay the respondent's costs of the appeal agreed as a stated amount; or

(d) the appellant pay the respondent's costs of the appeal, to be satisfied from an amount secured for the costs of the appeal with any balance to be paid to a stated party or the party's solicitor; or

(e) there be no order for the costs of the appeal.

(4) Unless the Court of Appeal otherwise orders in relation to an amount secured for the costs of the appeal, on the dismissal of the appeal, the registrar may pay the amount to the successful respondent.

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(5) The payment may be made to the solicitor on the record for the respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

5475 Appeals to Court of Appeal—consent orders

If the parties agree about the substantive orders the Court of Appeal will be asked to make by consent, but do not agree about the order for costs, the appeal may be listed for hearing even though the appeal papers have not been settled.

Division 5.4.7 Appeals to Court of Appeal—convictions and sentences

Subdivision 5.4.7.1 Appeals to Court of Appeal—convictions and sentences preliminary

5500 Definitions—div 5.4.7

In this division:

appeal means an appeal against a conviction recorded, or sentence imposed, by the court.

Note ***Conviction*** and ***sentence*** are defined in r 5000 (Definitions—ch 5).

convicted person means—

(a) for a conviction—the person against whom the conviction was recorded; or

(b) for a sentence—the person on whom the sentence was imposed.

out of time, for a conviction or sentence, means more than 28 days after the day the conviction was recorded or sentence was imposed.

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Subdivision 5.4.7.2 Appeals to Court of Appeal—leave to appeal out of time by convicted person

5505 Application—sdiv 5.4.7.2

This subdivision applies to an application by the convicted person for a conviction or sentence for leave to appeal to the Court of Appeal out of time against the conviction or sentence.

5506 Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence

(1) The application must be made to the registrar in the first instance.

Note See approved form 5.16 (Court of Appeal—application to registrar for leave to appeal out of time against conviction or sentence) AF2006-400.

(2) Part 6.2 (Applications in proceedings) applies to the application as if—

(a) a reference to an application in a proceeding were a reference to the application; and

(b) any other necessary changes were made.

(3) The application must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

(b) the draft notice of appeal.

(4) If the convicted person wants to present the person's case in writing under part 5.8 (Written cases) the application must state that the person wants to do so.

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5507 Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence to be sealed

The registrar must seal the original and filed copies of the application.

Note The registrar may reject an application that is filed (see r 6140 (Rejecting documents—noncompliance with rules etc) and r 6142 (Rejecting documents—abuse of process etc)).

5508 Appeals to Court of Appeal—serving application for leave to appeal out of time against conviction or sentence

The convicted person must serve the following on the director of public prosecutions not later than 5 days after the day the application is filed:

(a) a sealed copy of the application;

(b) a stamped copy of the accompanying affidavit;

(c) a stamped copy of the draft notice of appeal.

Note Rule 5533 (Appeals to Court of Appeal—service if convicted person in custody and unrepresented) deals with the service of documents if the convicted person is in custody and not represented by a lawyer.

5509 Appeals to Court of Appeal—response by DPP to application for leave to appeal out of time against conviction or sentence

(1) The director of public prosecutions must file a response to the application.

Note See approved form 5.17 (Court of Appeal—response by Director of Public Prosecutions) AF2006-401.

(2) The response must state—

(a) whether the director opposes, consents to, or does not oppose, the application; and

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(b) whether the director proposes to file any affidavits in response to the application; and

(c) an address for service.

Note ***Address for service*** is defined in the dictionary.

(3) The director of public prosecutions must file the response, and serve a stamped copy on the convicted person, not later than 7 days after the day the application is served on the director.

(4) If the director of public prosecutions wants to present evidence, the director must file the director's affidavits, and serve them on the convicted person, not later than 14 days after the day the application is served on the director.

5510 Appeals to Court of Appeal—registrar's decision on application for leave to appeal out of time against conviction or sentence

(1) The registrar must tell the convicted person, and the director of public prosecutions, of the registrar's decision to give or refuse leave to appeal out of time.

(2) If the registrar gives leave, the director of public prosecutions may apply to the Court of Appeal for an order that the application mentioned in rule 5505 (Application—sdiv 5.4.7.2) be refused.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.

(3) If the registrar refuses leave—

(a) the registrar must give the convicted person a copy of the form to be used for applying to the Court of Appeal when telling the person about the refusal; and

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(b) the convicted person may apply to the Court of Appeal to have the application mentioned in rule 5505 decided by the Court of Appeal.

Note 1 Pt 6.2 (Applications in proceedings) applies to the application to the Court of Appeal.

Note 2 See approved form 5.18 (Court of Appeal—application for leave to appeal out of time against conviction or sentence) AF2006-402.

(4) The application to the Court of Appeal must be filed not later than 14 days after the day the convicted person is told about the registrar's decision.

Subdivision 5.4.7.3 Appeals to Court of Appeal—leave to appeal out of time by DPP

5520 Application of div 5.4.3 to certain appeals by DPP

For these rules, division 5.4.3 (Appeals to Court of Appeal—leave to appeal out of time from final judgments) applies to an application for leave to appeal out of time against sentence by the director of public prosecutions as if—

(a) a reference to a final judgment were a reference to a sentence; and

(b) any other necessary changes were made.

Subdivision 5.4.7.4 Appeals to Court of Appeal—convictions and sentences generally

5530 Appeals to Court of Appeal—treating application for leave to appeal out of time against conviction or sentence as appeal

If an application for leave to appeal out of time against conviction or sentence is made by the convicted person to the Court of Appeal, the court may treat the hearing of the application as the hearing of the appeal.

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5531 Appeals to Court of Appeal—grounds of appeal against conviction or sentence

Unless the Court of Appeal otherwise orders, the following must not be allowed as a ground for appeal against conviction or sentence unless objection was taken at the trial by the party appealing:

(a) a direction given by the trial judge;

(b) the trial judge's failure to give a direction;

(c) the trial judge's decision about the admission or rejection of evidence.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

5532 Appeals to Court of Appeal—trial judge's report for appeal against conviction or sentence

(1) During the hearing of an appeal against conviction or sentence, the Court of Appeal may ask the trial judge to give the court (through the registrar) a report on any aspect of the case.

(2) The report is not available for inspection by the parties or anyone else unless the Court of Appeal otherwise orders on application by a party to the appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

5533 Appeals to Court of Appeal—service if convicted person in custody and unrepresented

(1) This rule applies to an application or appeal under this part in relation to a conviction or sentence if the convicted person—

(a) is in custody; and

(b) is not represented by a solicitor.

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(2) A document required or allowed under these rules to be served by the convicted person for the application or appeal may be served on the registrar for service by the registrar on another party.

(3) A document required or allowed under these rules to be served on the convicted person for the application or appeal may be served by leaving the document with the person in charge of the place where the person is in custody.

(4) If a document mentioned in subrule (3) is served by the registrar, the document may be served—

(a) by sending a copy by prepaid post to the place where the convicted person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

5534 Appeals to Court of Appeal—written case and presence if convicted person appellant

(1) This rule applies to an application or appeal under this part in relation to a conviction or sentence if the convicted person is the applicant or appellant.

(2) The convicted person may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

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Note The convicted person must state that the person wants to present his or her case in writing. See, eg, r 5506 (4) (Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence).

(3) If the convicted person presents his or her case in writing, the person need not appear or be present at the hearing of the application or appeal unless the Court of Appeal otherwise orders.

(4) If the convicted person is in custody, is not represented by a legal practitioner and does not present his or her case in writing, the person is entitled to be present at the hearing of the application or appeal in the way that the Court of Appeal orders.

(5) The Court of Appeal may order that the convicted person be present—

(a) in person; or

(b) by audiovisual link or audio link.

(6) The Court of Appeal may make an order under this rule on application by a party to the application or appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

5535 Appeals to Court of Appeal—order for production of offender

(1) The Court of Appeal may make the following orders in relation to the hearing of an application or appeal under this part in relation to a conviction or sentence:

(a) an order requiring the production of a person who is in custody;

(b) an order about the continuing custody of a person who is in custody.

Note See approved form 5.19 (Court of Appeal—order for production of offender) AF2006-403.

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(2) The Court of Appeal may order that the person in custody be produced—

(a) in person; or

(b) by audiovisual link or audio link.

(3) The Court of Appeal may make an order under this rule on application by a party to the application or appeal or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

5536 Appeals to Court of Appeal—fine paid to be kept pending appeal

(1) This rule applies if the convicted person for a conviction or sentence is sentenced to pay a fine.

(2) If the convicted person appeals against the conviction or sentence, any amount paid by the person as the fine, or part of the fine, must be kept by the person authorised to receive the fine until the appeal is finally decided.

(3) If the convicted person has paid an amount mentioned in subrule (2), and the person's appeal is upheld, the person is entitled to a refund, unless the Court of Appeal otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(4) Without limiting rule 6016 (Application in proceeding—oral application), an application for an order otherwise ordering under subrule (3) may be made orally, unless the Court of Appeal otherwise orders on application by a party to the appeal or on its own initiative.

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(5) In this rule:

fine includes an amount for costs or any other amount ordered to be paid by the convicted person in relation to an offence.

Examples

1 a financial penalty imposed by a court for an offence

2 a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence

3 costs payable to the Territory under a court order in a proceeding for an offence

4 a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*

5 an amount payable under a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 (Reparation orders—losses and expenses generally)

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

5537 Appeals to Court of Appeal—solicitor's instructions to act for convicted person ended

(1) This rule applies to a solicitor if—

(a) the solicitor is acting for the convicted person for a conviction or sentence in relation to an application or appeal under this part in relation to the conviction or sentence; and

(b) the solicitor's instructions to act for the convicted person are ended before—

(i) for an application—the application is decided; or

(ii) for an appeal—judgment is given in the appeal.

(2) The solicitor must—

(a) file a notice stating that the solicitor is no longer acting for the convicted person; and

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(b) serve a stamped copy of the notice on each party to the application or appeal (including the convicted person).

Note See approved form 5.20 (Court of Appeal—notice of solicitor no longer acting) AF2006-404.

(3) The solicitor must file and serve the notice as soon as practicable, but not later than 14 days after the day the solicitor's instructions are ended.

5538 Appeals to Court of Appeal—solicitor wants to withdraw from acting for convicted person

(1) This rule applies to a solicitor if—

(a) the solicitor is acting for the convicted person for a conviction or sentence in relation to an application or appeal under this part in relation to the conviction or sentence; and

(b) the solicitor no longer wants to act for the convicted person in relation to the application or appeal.

(2) The solicitor must—

(a) file a notice stating that the solicitor intends to ask the Court of Appeal for leave to withdraw; and

(b) serve a stamped copy of the notice on each party other than the convicted person; and

(c) serve a stamped copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address.

(3) The copies of the notice must be served as soon as possible after the notice is filed.

(4) The solicitor may withdraw from acting for the convicted person only with the Court of Appeal's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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(5) If the Court of Appeal gives the solicitor leave to withdraw, the solicitor must—

(a) file a notice of withdrawal; and

Note See approved form 5.21 (Court of Appeal—notice of withdrawal of solicitor) AF2006-405.

(b) serve a stamped copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a stamped copy of the notice on the director of public prosecutions.

5539 Appeals to Court of Appeal—notification of result of appeal against conviction etc

(1) For an application or appeal under this part in relation to a conviction or sentence, the registrar must give notice—

(a) to each relevant person about the final decision made on the application or appeal; and

(b) to each party to the application or appeal, or anyone else the registrar considers appropriate, about an order made in relation to the application or appeal.

(2) However, the registrar need only give notice to a person mentioned in subrule (1) if the person was not present when the application or appeal was decided, or the order made.

(3) In this rule:

present means—

(a) present in person; or

(b) present by audiovisual link or audio link.

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relevant person means—

(a) a party to the application or appeal; or

(b) the judge who gave the order appealed from; or

(c) anyone else the registrar considers appropriate.

Division 5.4.8 Appeals to Court of Appeal—miscellaneous

5600 Appeals to Court of Appeal—power to amend proceedings in court below

The Court of Appeal may amend the proceeding in which the order appealed from under this part was made.

5601 Appeals to Court of Appeal—expediting appeals etc

(1) The Court of Appeal may, at any time, make any order the Court of Appeal considers just to expedite an appeal or application under this part.

(2) A party wanting leave to appeal under this part may apply to the Court of Appeal for an order that the application for leave to appeal be heard with, or immediately before, the hearing of the appeal, and for any consequential orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order.

5602 Appeals to Court of Appeal—directions about appeal etc

(1) At any time after the filing in the court of a notice of appeal or application for leave to appeal (or leave to appeal out of time) under this part, the Court of Appeal may give directions in relation to the conduct of the appeal or application (including, for the application, the appeal if leave is given), even though the direction may be inconsistent with another provision of these rules.

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(2) The Court of Appeal may give a direction under this rule on application by a party to the appeal or application or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions or to amend or revoke a direction.

(3) In deciding whether to give a direction under this rule, the interests of justice are paramount.

(4) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.

(5) The Court of Appeal may at any time amend or revoke a direction made under this rule on application by a party or on its own initiative.

(6) The powers of the Court of Appeal under this rule are additional to any other powers of the Court of Appeal under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

5603 Appeals to Court of Appeal—want of prosecution of appeal

(1) In this rule:

appeal means—

(a) an application for further time to apply for leave to appeal under this part; or

(b) an appeal or application for leave to appeal (or leave to appeal out of time) under this part, and includes a convicted person's application; or

(c) an application for leave to file a notice of appeal under rule 5405 (2) (Appeals to Court of Appeal—time for filing notice of appeal).

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appellant means—

(a) a person applying for further time to apply for leave to appeal under this part; or

(b) an applicant for leave to appeal (or leave to appeal out of time) under this part; or

(c) the convicted person for a conviction or sentence applying for leave to appeal under subdivision 5.4.7.2 (Appeals to Court of Appeal—leave to appeal out of time by convicted person); or

(d) an applicant for leave to file a notice of appeal under rule 5405 (2); or

(e) a person appealing under this part.

convicted person's application means an application under subdivision 5.4.7.2 (Appeals to Court of Appeal—leave to appeal out of time by convicted person) by the convicted person for a conviction or sentence.

(2) This rule applies if an appellant—

(a) has not done anything required to be done under these rules during a period of 3 months after the day the requirement arises; or

(b) otherwise has not prosecuted the appellant's appeal with appropriate effort during a period of 3 months after the day the last step in the proceeding was taken.

(3) The Court of Appeal may—

(a) order that the appeal be dismissed for want of prosecution and confirm the order appealed from; or

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(b) on its own initiative, set a time for the doing of a thing required to be done in relation to the appeal and—

(i) at the same time order that, if the appellant does not do the thing within the time, the appeal will be dismissed for want of prosecution and the order appealed from confirmed; or

(ii) if the appellant does not do the thing within the time—order that the appeal be dismissed for want of prosecution and confirm the order appealed from; or

(c) make any other order the Court of Appeal considers just.

(4) A respondent may apply to the Court of Appeal to require the appellant to show cause why the appeal should not be dismissed for want of prosecution.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(5) On the hearing of the application, the Court of Appeal may make an order mentioned in subrule (3).

(6) An order mentioned in subrule (3) (b) may be amended at any time before the appeal is dismissed for want of prosecution and, in special circumstances, may be amended or revoked after that time.

5604 When Court of Appeal may be constituted by single judge—Supreme Court Act 1933, s 37J (1) (h)

The Court of Appeal may be constituted by a single judge in relation to hearing and deciding the dismissal of an appeal under this part for any of the following reasons:

(a) the appeal is incompetent;

(b) the notice of appeal does not contain any coherent or arguable ground of appeal;

(c) the appellant has failed to comply with any relevant rules of court or practice note;

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(d) the appellant has failed to comply with a direction of the Court of Appeal;

(e) the appellant has failed to provide security for costs in accordance with an order of the Court of Appeal.

5605 Jurisdiction of Court of Appeal that may be exercised by single judge—Supreme Court Act 1933, s 37J (3)

The jurisdiction and powers of the Court of Appeal may be exercised by a single judge in the following proceedings:

(a) an application by the director of public prosecutions under rule 5510 (2) (Appeals to Court of Appeal—registrar's decision on application for leave to appeal out of time against conviction or sentence);

(b) an application by the applicant under rule 5510 (3) (b).

5606 Appeals to Court of Appeal—further evidence on appeal

(1) This rule applies—

(a) to an application to the Court of Appeal to receive evidence on a hearing of an appeal under this part in addition to evidence in the proceeding appealed from; and

(b) unless the Court of Appeal otherwise orders.

(2) The application must be made on the hearing of the appeal.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(3) Not later than 28 days before the day set for the start of the hearing of the appeal, the applicant must file 1 or more affidavits stating—

(a) the grounds of the application; and

(b) any evidence necessary to establish the grounds of the application; and

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(c) any evidence that the applicant wants the Court of Appeal to receive.

(4) The evidence of any other party to the appeal must be given by affidavit filed in the court not later than 7 days before the day set for the start of the hearing of the appeal.

(5) A party to the appeal must, not later than the time for the party to file an affidavit under this rule—

(a) file the number of copies of the affidavit that the registrar directs; and

(b) serve 3 stamped copies of the affidavit on each other party to the appeal.

(6) If the Court of Appeal orders that it will receive the evidence in the appeal, and the evidence is to be given by an expert witness, the following rules apply, with necessary changes, to the appeal:

- division 2.12.1 (Expert evidence generally)
- division 2.12.2 (Multiple expert witnesses for same issue)
- rule 1242 (Supplementary expert reports)
- rule 1243 (Expert evidence to be covered by expert report)
- rule 1244 (Expert reports admissible as evidence of opinion etc)
- rule 1245 (Requiring attendance of expert for cross-examination etc)
- rule 1246 (Tender of expert report).

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5607 Appeals to Court of Appeal—keeping exhibits

(1) This rule applies in relation to an appeal or application to the Court of Appeal under this part.

(2) Unless the Court of Appeal or the court otherwise orders, the registrar must keep the exhibits in the proceeding until 28 days after the day the appeal is disposed of.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(3) However, the register may permit a document or thing to be removed from the registry in accordance with rule 6767 (Power to allow removal of exhibits etc).

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Part 5.5 Orders to review Magistrates Court decisions

5700 Meaning of *review order*—pt 5.5

In this part:

review order means an order nisi to review a decision of the Magistrates Court mentioned in the *Magistrates Court Act 1930*, section 219B (Appeals by way of orders to review).

5701 Review orders—application for order

(1) An application for a review order must be—

(a) made to the Supreme Court not later than the time mentioned in the *Magistrates Court Act 1930*, section 219C (1) (Grant of order nisi to review); and

(b) made without notice to another party; and

(c) supported by an affidavit under rule 5702.

(2) Part 6.2 (Applications in proceedings) applies to an application for a review order as if—

(a) a reference to an application in a proceeding were a reference to an application for a review order; and

(b) any other necessary changes were made.

(3) Without limiting rule 6016 (Application in proceeding—oral application), an application under this rule may be made orally, unless the court otherwise orders on application by a party or on its own initiative.

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5702 Review orders—affidavits

The affidavit must set out—

(a) the material circumstances; and

(b) each statutory ground relied on; and

(c) a brief statement of the matter relied on for each ground.

5703 Review orders—service of applications

The Supreme Court may, on its own initiative, order that notice of an application for a review order be given to anyone interested in maintaining the relevant decision of the Magistrates Court.

5704 Review orders—parties

A party served with an application for a review order is entitled to be heard on the application.

5705 Review orders—service of review order

(1) Not later than 7 days after the day a review order is made or not later than any further time allowed by the Supreme Court, the order, and affidavit mentioned in rule 5702 (Review orders—affidavits), must be—

(a) served on each person called on by the order to show cause; and

(b) if the court orders service under rule 5703 (Review orders—service of applications) on anyone else—served on the person; and

(c) given to the registrar of the Magistrates Court.

(2) The Supreme Court may allow further time under subrule (1) on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for further time.

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5706 Review orders—notice of intention to respond to review order

(1) This rule applies if a person served with a review order wants to oppose the making absolute of the order, or be heard in that proceeding.

(2) The person must file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the order were an originating application; and

(b) the person were a defendant; and

(c) the applicant for the order were the plaintiff; and

(d) any other necessary changes were made.

5707 Review orders—security for costs

(1) This rule applies if the Supreme Court makes a review order under the *Magistrates Court Act 1930*, section 219C (2) (Grant of order nisi to review).

(2) The Supreme Court may order that the person on whose application the review order is made give the security it considers appropriate for the costs of the proceeding.

(3) The security must be given not later than the time stated in the order or not later than any further time allowed by the Supreme Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for further time.

(4) If the security is not given under the order, the Supreme Court may, on application by the person called on to show cause by the review order, revoke the review order.

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(5) Rule 1903 (Security for costs—way security given) and rule 1906 (Security for costs—finalising security) apply to security ordered to be given under this rule as if—

(a) the applicant for the review order were the plaintiff; and

(b) the person called on to show cause by the review order were the defendant; and

(c) any other necessary changes were made.

(6) If the security is given by bond, and the appellant is ordered to pay the costs of the proceeding to the respondent, the registrar must assign the bond to the respondent so the respondent may enforce it.

5708 Review orders—stay

(1) This rule applies if the Supreme Court makes a review order under the *Magistrates Court Act 1930*, section 219C (2) (Grant of order nisi to review).

(2) The Supreme Court may—

(a) order that the enforcement of the decision of the Magistrates Court be stayed pending the hearing of the review order; and

(b) if the appellant is in custody and is not detained for any other reason—grant the appellant bail in accordance with the *Bail Act 1992*; and

(c) if the review order is made in relation to a decision of a kind mentioned in the *Magistrates Court Act 1930*, section 219B (1) (d) or (e) and, after making that decision, the Magistrates Court has, under the *Crimes Act 1900*, section 375 (Summary disposal of certain cases), heard and decided a case and sentenced or otherwise dealt with the defendant according to law—order that the enforcement of any further decision made by the Magistrates Court in relation to the case be stayed.

Note Pt 6.2 (Applications in proceedings) applies to an application for a stay under this rule.

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(3) If the Supreme Court makes a review order in relation to an application by the informant in relation to a decision of the Magistrates Court of a kind mentioned in the *Magistrates Court Act 1930*, section 219B (1) (d) or (e), the proceeding in the Magistrates Court is stayed until the proceeding in the Supreme Court is finished, abandoned or discontinued.

5709 Review orders—non-appearance of applicant

If the person on whose application the review order has been made under the *Magistrates Court Act 1930*, section 219C (2) (Grant of order nisi to review) fails to appear on the date stated in the order or on any date to which the hearing is adjourned, the Supreme Court may revoke the order on its own initiative.

5710 Review orders—application to revoke review order

(1) An application to revoke a review order must be supported by affidavit.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(2) An application to revoke a review order, together with any supporting affidavit, must be served on—

(a) the applicant for the order; and

(b) anyone the court orders to be served under rule 5703 (Review orders—service of applications).

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Part 5.6 Reference appeals

Division 5.6.1 Reference appeals—Supreme Court

5750 Definitions—div 5.6.1

In this division:

applicant—see the *Magistrates Court Act 1930*, section 219AB (2) (Reference appeal following acquittal on indictment).

Note The ***applicant*** for a reference appeal is the Attorney-General or director of public prosecutions.

interested party—see the *Magistrates Court Act 1930*, section 219AC (1).

Note An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial, or a person who seeks to be heard if the Supreme Court is satisfied that the person has a sufficient interest in the appeal to be heard.

reference appeal means an appeal under the *Magistrates Court Act 1930*, section 219AB (2).

5751 Reference appeals to Supreme Court—application for reference appeal

(1) An application for a reference appeal must—

(a) state the grounds of the application; and

(b) state the question of law to be decided.

Note See approved form 5.22 (Supreme Court—application for reference appeal) AF2006-406.

(2) An application for a reference appeal must be filed in the Supreme Court not later than 6 weeks after the day the trial ends, or not later than any further time the court allows.

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(3) Part 6.2 (Applications in proceedings) applies to an application for further time as if—

(a) a reference to an application in a proceeding were a reference to an application for further time; and

(b) any other necessary changes were made.

(4) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5752 Reference appeals to Supreme Court—service of application etc for reference appeal

A sealed copy of the application must be served on each interested party within 7 days after the day the application is filed in the Supreme Court.

5753 Reference appeals to Supreme Court—notice of intention to respond by interested party

(1) An interested party may file in the Supreme Court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the party were a defendant; and

(c) the applicant were the plaintiff; and

(d) any other necessary changes were made.

(2) If an interested party is not represented in the appeal, the applicant must instruct counsel to represent the party and file the notice of intention to respond as mentioned in subrule (1).

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5754 Reference appeals to Supreme Court—discontinuance of reference appeal

(1) The applicant may discontinue the reference appeal or a part of the reference appeal—

(a) without the Supreme Court's leave, at any time before the hearing of the reference appeal; or

(b) only with the Supreme Court's leave, at the hearing, or after the hearing and before the decision is made on the reference appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(2) However, if the reference appeal is to be decided by written cases under part 5.8 (Written cases), the applicant may discontinue the reference appeal or a part of the reference appeal—

(a) without the Supreme Court's leave, at any time before, or on, the last day that the applicant may file written submissions under rule 5856 (3) (Written cases—filing etc written case for appeal); or

(b) only with the Supreme Court's leave, at any time after the last day mentioned in paragraph (a), but before the decision is made on the reference appeal.

(3) The applicant may discontinue the reference appeal by filing a notice of discontinuance in the Supreme Court, and serving a stamped copy of the notice on each interested party.

(4) If the reference appeal or a part of the reference appeal is discontinued, the appeal or part of the appeal is abandoned by the applicant.

5755 Reference appeals to Supreme Court—application of certain rules to reference appeals

(1) The provisions mentioned in subrule (2) apply to a reference appeal as if—

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(a) a reference to an appeal were a reference to the reference appeal; and

(b) a reference to the appellant were a reference to the applicant; and

(c) a reference to the respondent were a reference to each interested party; and

(d) a reference to a notice of appeal were a reference to the application for a reference appeal; and

(e) any other necessary changes were made to those provisions or any other provisions of these rules.

(2) The provisions applying to reference appeals are as follows:

- rule 5104 (Appeals to Supreme Court—notice of appeal to be sealed)
- rule 5106 (Appeals to Supreme Court—date for settlement of appeal papers)
- rule 5111 (Appeals to Supreme Court—amending notice of appeal)
- rule 5130 (Appeals to Supreme Court—draft index of appeal papers)
- rule 5131 (Appeals to Supreme Court—settlement of appeal papers)
- rule 5132 (Appeals to Supreme Court—content of appeal papers)
- rule 5133 (Appeals to Supreme Court—presentation of appeal papers)
- rule 5134 (Appeals to Supreme Court—filing and serving appeal papers)
- rule 5135 (Appeals to Supreme Court—setting appeal for hearing)
- rule 5136 (Appeals to Supreme Court—changing appeal hearing date)

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- rule 5137 (Appeals to Supreme Court—written summary and list for appeal hearing)
- rule 5138 (Appeals to Supreme Court—summaries of arguments), other than subrule (1) (c)
- rule 5139 (Appeals to Supreme Court—list of authorities, legislation and texts)
- rule 5140 (Appeals to Supreme Court—absence of party)
- rule 5170 (Appeals to Supreme Court—abandonment of ground of appeal)
- rule 5194 (Appeals to Supreme Court—keeping exhibits).

Division 5.6.2 Reference appeals—Court of Appeal

5770 Definitions—div 5.6.2

In this division:

applicant—see the *Supreme Court Act 1933*, section 37S (2) (Reference appeal following acquittal on indictment).

Note The ***applicant*** for a reference appeal is the Attorney-General or director of public prosecutions.

interested party—see the *Supreme Court Act 1933*, section 37S (4).

Note An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

reference appeal means an appeal under the *Supreme Court Act 1933*, section 37S.

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5771 Reference appeals to Court of Appeal—application for reference appeal

(1) An application for a reference appeal must—

(a) state the grounds of the application; and

(b) state the question of law to be decided.

Note See approved form 5.23 (Court of Appeal—application for reference appeal) AF2006-407.

(2) If the applicant wants to present the applicant's case in writing under part 5.8 (Written cases), the application must state that the applicant wants to do so.

5772 Reference appeals to Court of Appeal—service of application etc for reference appeal

A sealed copy of the application must be served on each interested party within 7 days after the day the application is filed in the court.

5773 Reference appeals to Court of Appeal—notice of intention to respond by interested party

(1) An interested party may file in the court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

(a) the application were an originating application; and

(b) the party were a defendant; and

(c) the applicant were the plaintiff; and

(d) any other necessary changes were made.

(2) If an interested party is not represented in the appeal, counsel instructed by the applicant under the *Supreme Court Act 1933*, section 37S (5) represents the party and must file the notice of intention to respond as mentioned in subrule (1).

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5774 Reference appeals to Court of Appeal—discontinuance of reference appeal

(1) The applicant may discontinue the reference appeal or a part of the reference appeal—

(a) without the Court of Appeal's leave, at any time before the hearing of the reference appeal; or

(b) only with the Court of Appeal's leave, at the hearing, or after the hearing and before the decision is made on the reference appeal.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(2) However, if the reference appeal is to be decided by written cases under part 5.8 (Written cases), the applicant may discontinue the reference appeal or a part of the reference appeal—

(a) without the Court of Appeal's leave, at any time before, or on, the last day that the applicant may file written submissions under rule 5856 (3) (Written cases—filing etc written case for appeal); or

(b) only with the Court of Appeal's leave, at any time after the last day mentioned in paragraph (a), but before the decision is made on the reference appeal.

(3) The applicant may discontinue the reference appeal by filing a notice of discontinuance in the court, and serving a stamped copy of the notice on each interested party.

(4) If the reference appeal or a part of the reference appeal is discontinued, the appeal or part of the appeal is abandoned by the applicant.

5775 Reference appeals to Court of Appeal—application of certain rules to reference appeals

(1) The rules mentioned in subrule (2) apply to a reference appeal as if—

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(a) a reference to an appeal were a reference to the reference appeal; and

(b) a reference to the appellant were a reference to the applicant; and

(c) a reference to the respondent were a reference to each interested party; and

(d) a reference to a notice of appeal were a reference to the application for a reference appeal; and

(e) any other necessary changes were made to those provisions or any other provisions of these rules.

(2) The rules applying to reference appeals are as follows:

- rule 5406 (Appeals to Court of Appeal—notice of appeal to be sealed)
- rule 5408 (Appeals to Court of Appeal—date for settlement of appeal papers)
- rule 5412 (Appeals to Court of Appeal—amending notice of appeal)
- rule 5432 (Appeals to Court of Appeal—settlement of appeal papers)
- rule 5436 (Appeals to Court of Appeal—setting appeal for hearing)
- rule 5437 (Appeals to Court of Appeal—changing appeal hearing date)
- rule 5441 (Appeals to Court of Appeal—absence of party)
- rule 5470 (Appeals to Court of Appeal—abandonment of ground of appeal)
- rule 5607 (Appeals to Court of Appeal—keeping exhibits).

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Part 5.7 Special cases

Division 5.7.1 Questions referred—Supreme Court

5800 Application—div 5.7.1

This division applies to a question referred to the Supreme Court from a proceeding in another court or a tribunal (the ***referring court or tribunal***), other than a reference appeal to which division 5.6.1 (Reference appeals—Supreme Court) applies.

Note 1 Div 2.15.3 (Separate decisions on questions) deals with questions for decision of the Supreme Court from a proceeding in the Supreme Court.

Note 2 Div 5.7.2 deals with a case stated or question reserved by the Supreme Court for decision by the Court of Appeal.

Note 3 Referring courts and tribunals are mentioned in table 5800.

Table 5800 Referring courts and tribunals

column 1 item	column 2 referring court or tribunal	column 3 constitution of Supreme Court for special case	column 4 law under which question referred
1	ACT civil and administrative tribunal	judge or associate judge	*ACT Civil and Administrative Tribunal Act 2008*, s 84
2	adjudicator	judge or associate judge	*Building and Construction Industry (Security of Payment) Act 2009*, s 43
3	Magistrates Court	judge or associate judge	*Magistrates Court Act 1930*, s 267

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5801 Definitions—div 5.7.1

In this division:

initiating party means—

(a) the party who requested that the question be referred; or

(b) if the question was referred by the referring court or tribunal on its own initiative and the court or tribunal is a party to the proceeding—the court or tribunal; or

(c) if the question was referred by the referring court or tribunal on its own initiative and the court or tribunal is not a party to the proceeding—the entity that made the decision to which the proceeding before the referring court or tribunal relates.

question referred, to the Supreme Court—a reference to a ***question referred*** to the Supreme Court is a reference to a case stated to, or question reserved for, (however described) the Supreme Court.

referring court or tribunal—see rule 5800.

Supreme Court means the Supreme Court otherwise than when it is the Court of Appeal.

tribunal includes any entity (other than a court) that may refer a question to the Supreme Court.

5802 Question referred to Supreme Court—form

(1) A question referred to the Supreme Court must be in the form of a special case.

Note See approved form 5.24 (Supreme Court—special case) AF2006-408.

(2) The special case must—

(a) state the questions to be decided; and

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(b) briefly state the facts, and have attached all documents, necessary to allow the Supreme Court to decide the questions raised by the special case; and

(c) be divided into paragraphs numbered consecutively.

(3) If the special case is to be presented in writing under part 5.8 (Written cases), the special case must state that it is to be presented in that way.

5803 Special case to Supreme Court—preparation and settling

Unless the referring court or tribunal otherwise directs, the special case must—

(a) be prepared in draft by the initiating party after consultation with each other active party; and

Note ***Active party*** is defined in the dictionary.

(b) contain an address for service for each active party; and

Note ***Address for service*** is defined in the dictionary.

(c) be settled by the referring court or tribunal; and

(d) be served on each active party; and

(e) be filed in the Supreme Court by the initiating party on behalf of the referring court or tribunal.

5804 Special case to Supreme Court—person with legal disability

(1) If a person with a legal disability is a party to the special case, the special case must not be set down for hearing without the Supreme Court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(2) The application for leave must be supported by sufficient evidence that the statements contained in the special case are true, as far as they affect the interests of the person with a legal disability.

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5805 Special case to Supreme Court—directions hearing

After the special case is filed under rule 5803, the registrar must—

(a) set a date for a directions hearing; and

(b) tell the parties the date set for the directions hearing.

5806 Special case to Supreme Court—setting down for hearing

At the directions hearing, the registrar must—

(a) if satisfied that all the active parties have been served with the special case, and the special case is ready for hearing—

(i) set a date for the hearing of the special case; and

(ii) tell the parties the date set for the hearing; or

(b) adjourn the directions hearing.

5807 Special case to Supreme Court—insufficient statement of case

(1) This rule applies if it appears to the Supreme Court that the special case does not state the facts, and have attached the documents, necessary to allow the Supreme Court to decide the questions raised by the special case or otherwise to hear and decide the proceeding on the special case.

(2) The Supreme Court may—

(a) with each active party's agreement, amend the special case; or

(b) send the special case back to the initiating party for the party to amend the special case in the way stated by the court; or

(c) for a proceeding that is a civil proceeding—receive evidence, make findings of fact, and amend the special case accordingly.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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5808 Special case to Supreme Court—court can draw inferences

For a special case under this division, the Supreme Court may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at a trial.

5809 Special case to Supreme Court—agreement about damages and costs

(1) The parties to a special case may enter into a written agreement that, on the Supreme Court's decision in the affirmative or negative on the questions raised by the special case, a stated amount must be paid by a party to another party, either with or without costs of the proceeding.

(2) Judgment may be given for the stated amount with or without costs, and the judgment may be enforced immediately unless otherwise agreed or stayed on appeal.

(3) In this rule:

stated amount means—

(a) an amount agreed by the parties; or

(b) an amount set by the Supreme Court; or

(c) an amount set in the way agreed by the parties or as the Supreme Court orders.

Division 5.7.2 Questions referred—Court of Appeal

5830 Application—div 5.7.2

This division applies to a question referred to the Court of Appeal from the Supreme Court, other than a reference appeal to which division 5.6.2 (Reference appeals—Court of Appeal) applies.

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5831 Definitions—div 5.7.2

In this division:

question referred, to the Court of Appeal—a reference to a ***question referred*** to the Court of Appeal is a reference to a case stated, or question reserved, by the Supreme Court to the Court of Appeal.

Supreme Court—

(a) means the Supreme Court otherwise than when it is the Court of Appeal; but

(b) does not include—

(i) a Full Court exercising appellate jurisdiction; or

(ii) the registrar.

5832 Question referred to Court of Appeal—form

(1) A question referred to the Court of Appeal must be in the form of a special case.

Note See approved form 5.25 (Court of Appeal—special case) AF2015-60.

(2) The special case must—

(a) state the questions to be decided; and

(b) briefly state the facts, and have attached all documents, necessary to allow the Court of Appeal to decide the questions raised by the special case; and

(c) be divided into paragraphs numbered consecutively.

(3) If the special case is to be presented in writing under part 5.8 (Written cases), the special case must state that it is to be presented in that way.

5833 Special case to Court of Appeal—preparation and settling

Unless the Supreme Court otherwise orders, the special case must be—

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(a) prepared in draft by the party having conduct of the special case after consultation with each other active party; and

Note ***Active party*** is defined in the dictionary.

(b) settled by the Supreme Court; and

(c) served on each active party; and

(d) filed in the Supreme Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

5834 Special case to Court of Appeal—setting down for hearing

On filing of the special case in the Supreme Court, the registrar, if satisfied that all the active parties have been served with the special case, must—

(a) set a date for the hearing of the special case; and

(b) tell the parties the date set for the hearing.

5835 Special case to Court of Appeal—court can draw inferences

For a special case under this division, the Court of Appeal may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at trial.

5836 Special case to Court of Appeal—agreement about damages and costs

(1) The parties to a special case may enter into a written agreement that, on the Court of Appeal's decision in the affirmative or negative on the questions raised by the special case, a stated amount must be paid by a party to another party, either with or without costs of the proceeding.

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(2) Judgment may be given for the stated amount with or without costs, and the judgment may be enforced immediately unless otherwise agreed or stayed on appeal.

(3) In this rule:

stated amount means—

(a) an amount agreed by the parties; or

(b) an amount set by the Court of Appeal; or

(c) an amount set in the way agreed by the parties or as the Court of Appeal orders.

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Part 5.8 Written cases

5850 Definitions—pt 5.8

In this part:

appeal means—

(a) an application for further time to apply for leave to appeal under part 5.3 (Appeals to Supreme Court) or part 5.4 (Appeals to Court of Appeal); or

(b) an appeal or application for leave to appeal (or leave to appeal out of time) to the Supreme Court under part 5.3; or

(c) an appeal or application for leave to appeal (or leave to appeal out of time) to the Court of Appeal under part 5.4, and includes a convicted person's application; or

Note For the application of div 5.4.3 to an application under sdiv 5.4.7.3 (Appeals to Court of Appeal—leave to appeal out of time by DPP), see r 5520.

(d) an application for leave to file a notice of appeal under rule 5405 (2) (Appeals to Court of Appeal—time for filing notice of appeal).

appellant means—

(a) for an appeal to the Supreme Court—

(i) a person applying for further time to apply for leave to appeal under part 5.3; or

(ii) an applicant for leave to appeal under division 5.3.2 (Appeals to Supreme Court—leave to appeal) or division 5.3.3 (Appeals to Supreme Court—leave to appeal out of time); or

(iii) a person appealing under part 5.3; and

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(b) for an appeal to the Court of Appeal—

(i) a person applying for further time to apply for leave to appeal under part 5.4; or

(ii) an applicant for leave to appeal under division 5.4.2 (Appeals to Court of Appeal—leave to appeal from interlocutory orders) or division 5.4.3 (Appeals to Court of Appeal—leave to appeal out of time from final judgments); or

(iii) the convicted person for a conviction or sentence applying for leave to appeal under subdivision 5.4.7.2 (Appeals to Court of Appeal—leave to appeal out of time by convicted person); or

(iv) an applicant for leave to file a notice of appeal under rule 5405 (2); or

(v) a person appealing under part 5.4.

convicted person's application means an application under subdivision 5.4.7.2 (Appeals to Court of Appeal—leave to appeal out of time by convicted person) by the convicted person for a conviction or sentence.

5851 Application of pt 5.8 to div 5.6.1 etc

This part applies, with necessary changes, to—

(a) division 5.6.1 (Reference appeals—Supreme Court); and

(b) division 5.6.2 (Reference appeals—Court of Appeal); and

(c) division 5.7.1 (Questions referred—Supreme Court); and

(d) division 5.7.2 (Questions referred—Court of Appeal).

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5852 Written cases—when used

(1) If all the parties to an appeal indicate, in accordance with this chapter, that they want to present their cases in writing, the appeal may be dealt with by written cases.

(2) If any of the parties to an appeal does not indicate, in accordance with this chapter, that the party wants to present his or her case in writing, the appeal must be dealt with by oral hearing.

(3) Subrule (2) is subject to rule 5534 (2) (Appeals to Court of Appeal—written case and presence if convicted person appellant).

Note Rule 5534 (2) provides that a convicted person who is the applicant or appellant may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

(4) This rule does not prevent the Court of Appeal or Supreme Court requiring the parties or a party to present oral argument.

5853 Written cases—appellant wants written case

An appellant may indicate, in accordance with this chapter, that the appellant wants to present his or her case in writing.

Note See the following provisions:

- r 5071 (4) (Appeals to Supreme Court—application for leave to appeal)
- r 5082 (4) (Appeals to Supreme Court—application for leave to appeal out of time)
- r 5101 (3) (Appeals to Supreme Court—requirements for notice of appeal etc)
- r 5311 (2) (Appeals to Court of Appeal—application for leave to appeal)
- r 5332 (2) (Appeals to Court of Appeal—application for leave to appeal out of time)
- r 5403 (4) (Appeals to Court of Appeal—requirements for notice of appeal etc)

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- r 5506 (4) (Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence)
- r 5751 (4) (Reference appeals to Supreme Court—application for reference appeal)
- r 5771 (2) (Reference appeals to Court of Appeal—application for reference appeal)
- r 5802 (3) (Question referred to Supreme Court—form)
- r 5832 (3) (Question referred to Court of Appeal—form).

5854 Written cases—respondent wants written case

(1) This rule applies if—

(a) an appellant indicates, in accordance with this chapter, that the appellant wants to present the appellant's case in writing; and

(b) a respondent also wants to present his or her case in writing.

(2) The respondent must file a notice stating that the respondent wants to present the respondent's case in writing.

(3) The notice must be filed, and a stamped copy served on each other party, not later than 7 days after the day the appellant's application or notice of appeal is served on the respondent.

(4) If all the parties to an appeal indicate, in accordance with this chapter, that they want to present their cases in writing, the hearing date for the appeal is vacated on the filing of the respondent's notice under subrule (2) (or, if there are 2 or more respondents, on the filing of the last notice under subrule (2)).

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5855 Written cases—filing etc written case for application

(1) This rule applies if an application is to be dealt with by written case.

(2) The appellant (or each appellant) must—

(a) if there is only 1 respondent—file the required number of copies of the appellant's written case in the court, and serve a copy on the respondent not later than 28 days after the day the notice mentioned in rule 5854 (2) is served on the appellant; or

(b) if there are 2 or more respondents and the notice mentioned in rule 5854 (2) is served by them on different days—file the required number of copies of the appellant's written case in the court, and serve a copy on each respondent not later than 28 days after the earliest of the days.

(3) The respondent (or each respondent) must file the required number of copies of the respondent's written case in the court, and serve a copy on each other party not later than 28 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).

(4) An appellant may file the required number of copies of written submissions in reply to a respondent's written case in the court, and serve a copy on the respondent (or each respondent) not later than 14 days after the day the respondent's written case is served on the appellant.

(5) In this rule:

application means an application mentioned in rule 5850 (Definitions—pt 5.8), definition of ***appeal***.

appellant means a person mentioned in rule 5850, definition of ***appellant***, other than subparagraphs (a) (iii) and (b) (iv).

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required number means—

(a) for an application to the Court of Appeal—4; or

(b) for an application to the Supreme Court—1.

5856 Written cases—filing etc written case for appeal

(1) This rule applies if an appeal is to be dealt with by written case.

(2) The appellant (or each appellant) must file the required number of copies of the appellant's written case in the court, and serve a copy on the respondent (or each respondent) not later than 28 days after the day the appeal papers are filed.

(3) The respondent (or each respondent) must file the required number of copies of the respondent's written case in the court, and serve a copy on each other party not later than 35 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).

(4) An appellant may file the required number of copies of written submissions in reply to the respondent's written case in the court, and serve a copy on the respondent (or each respondent) not later than 14 days after the day the respondent's written case is served on the appellant.

(5) In this rule:

appeal means—

(a) an appeal to the Supreme Court under part 5.3 (Appeals to Supreme Court); or

(b) an appeal to the Court of Appeal under part 5.4 (Appeals to Court of Appeal).

appellant means a person appealing under part 5.3 or part 5.4.

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required number means—

(a) for an appeal to the Court of Appeal—4; or

(b) for an appeal to the Supreme Court—1.

5857 Written cases—form

(1) The written case of a party must—

(a) have a title that includes the title of the proceeding; and

(b) identify the party; and

(c) have consecutively numbered paragraphs; and

(d) state the issues; and

(e) state the argument to be made on each issue, mentioning the steps in the argument and any authority, legislation or finding of fact to be relied on for each step; and

(f) if there is to be a challenge to any of the findings of fact of the entity appealed from, state—

(i) the claimed error (including any failure to make a finding of fact); and

(ii) the reasons why the party considers the finding was an error; and

(iii) the finding that the party considers should have been made; and

(g) include a chronology of the facts; and

(h) include a list of authorities, legislation and texts relied on by the party that identifies them in accordance with rule 5139 (3) (Appeals to Supreme Court—list of authorities, legislation and texts).

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(2) If the written case relies on a matter in another document, a copy of the document must be attached to the case and the case must—

(a) for a document mentioned in subrule (1) (h)—identify the document as mentioned in that paragraph; and

(b) for a transcript—identify the relevant parts by page and line; and

(c) for other documents—if relevant, identify the page of the document relied on.

(3) A written case need not be printed or in bound form, but must be clear, legible and securely fastened.

5858 Written cases—inspection

A written case cannot be inspected at the registry unless—

(a) all parties have filed their cases; or

(b) the appeal or application in which the written case is used has been decided.

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Chapter 6 General rules for all proceedings

Part 6.1 Introductory provisions—ch 6

6000 Application—ch 6

(1) This chapter applies to every proceeding in the Supreme Court or Magistrates Court to which these rules apply.

Note 1 Rule 4 (Application of rules) deals with the proceedings to which these rules apply.

Note 2 The Magistrates Court includes the Childrens Court (see *Magistrates Court Act 1930*, s 287)

(2) However, this chapter does not apply to a proceeding as far as—

(a) this chapter provides that it does not apply to the proceeding; or

(b) another chapter makes provision for the proceeding or provides that this chapter does not apply to the proceeding; or

(c) another territory law provides that this chapter does not apply to the proceeding.

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Part 6.2 Applications in proceedings

6005 Definitions—pt 6.2

In this part:

application in a proceeding—see rule 6006.

schedule of correspondence—a ***schedule of correspondence*** may include a copy of any of the following:

(a) an email;

(b) a fax;

(c) a legible, contemporaneous diary or file note of a conversation.

supporting material, for an application in a proceeding, means an affidavit, schedule of correspondence or anything else required by these rules to be, or otherwise properly, filed in the court in support of the application.

6006 Application—pt 6.2

(1) This part applies to an application in a proceeding in the court.

(2) An ***application*** in a proceeding includes—

(a) an application to the court about the proceeding, whether made during the proceeding or after judgment is given in the proceeding; or

(b) an application that a territory law requires be made in accordance with this part (however expressed); or

(c) an application for leave to begin a proceeding in a court based on a motor accident claim under the *Road Transport (Third-Party Insurance) Act 2008*, section 150 (Need for urgent proceeding).

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Examples for par (a)

1 an application under part 2.18 (Enforcement) for an order appointing a receiver, or an order for seizure and detention of property

2 an application under rule 1603 (Orders—set off between enforceable money orders) for an order that a money order be set off against another money order of the same court

3 an application for leave to appeal to the Court of Appeal under rule 5311 (Appeals to Court of Appeal—application for leave to appeal)

4 an application for leave to appeal to the Court of Appeal under rule 5332 (Appeals to Court of Appeal—application for leave to appeal out of time)

Example for par (b)

an application for leave to start a proceeding in the Supreme Court by oral originating application under rule 37 (When oral originating application may be made in Supreme Court)

Note 1 For the making of orders before a proceeding starts, see r 706 (Urgent orders before start of proceeding).

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) However, an ***application*** in a proceeding does not include—

(a) an application that is required under a territory law to be made to the registrar unless a territory law provides that this part applies to the application; or

(b) an application if these rules provide that this part does not apply to the application.

6007 Application in proceeding—contents

(1) An application in a proceeding must identify the person making the application—

(a) if the person is already a party to the proceeding—as the party (for example, as plaintiff or defendant); or

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(b) if the person is not yet a party to the proceeding—as the applicant.

Note 1 See approved form 6.2 (Application in proceeding) AF2010-103.

Note 2 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) An application in a proceeding must name as a person against whom relief is sought anyone whose interests may be affected by the granting of the relief.

(3) An application in a proceeding must identify each person against whom relief is sought—

(a) if the person is already a party to the proceeding—as the party (for example, as plaintiff or defendant); or

(b) if the person is not yet a party to the proceeding—as the respondent.

(4) If the person making the application is not already an active party, the application must state an address for service for the person.

Note ***Address for service*** is defined in the dictionary.

(5) The application—

(a) may be supported by—

(i) an affidavit setting out the facts relied on; or

(ii) a schedule of correspondence; or

(iii) anything else properly filed in support of the application; and

(b) must be supported by anything required by these rules to be filed in the court in support of the application; and

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(c) must be accompanied by anything required by these rules to accompany the application.

(6) If the court considers that the supporting material (if any) is insufficient to support the application, it may—

(a) adjourn the hearing of the application; and

(b) make any other orders it considers appropriate, including an order that supporting material or further supporting material be prepared.

(7) If the court orders that supporting material or further supporting material be prepared, the material must be filed in the court and served at least 2 days before the return date for the application.

Note See example to r 6008 (1).

6008 Application in proceeding—filing and service

(1) An application in a proceeding must be filed in the court, and, unless these rules otherwise provide, a stamped copy served on each other party, not later than 2 days before the return date for the application.

Example

If the return date is Friday, that day and the day the application is served are not counted in working out the 2 days. For service to be valid, the application must be served on or before the Tuesday before the return date.

Note 1 See r 6015 (Application in proceeding—applications under r 40).

Note 2 See the Legislation Act, s 151 (Working out periods of time generally) and these rules, pt 6.7 (Time).

Note 3 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) However, a party to the proceeding who is not an active party need not be served with the application unless the application seeks an order requiring the party to do, or not to do, something.

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(3) If the application is to be served on a person who is not an active party, the application must be served—

(a) personally unless the court otherwise orders; and

(b) not later than 2 days before the return date.

Note This part applies to an application for an order otherwise ordering.

(4) The court may order service of the application on anyone it considers appropriate.

Note This part applies to an application for an order under r (4).

6009 Application in proceeding—filing and service of supporting material

(1) If an application in a proceeding is to be filed in the court, the supporting material (if any) for the application must be filed with the application.

(2) If an application in a proceeding is to be served, the supporting material (if any) for the application must be served with the application.

6010 Application in proceeding—absence of party

The court may hear and decide an application in a proceeding in the absence of a party to the proceeding if—

(a) service of the application on the absent party is not required under these rules or by an order of the court; or

(b) the application has been served on the absent party in accordance with these rules; or

(c) these rules provide that the application may be heard in the absence of the party.

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6011 Application in proceeding—dismissal or adjournment if application not served etc

(1) This rule applies if—

(a) a person has not been served with an application in a proceeding; and

(b) on the hearing of the application, the court considers that the person should have been served.

(2) The court may—

(a) dismiss the application; or

(b) adjourn the hearing of the application so that the application can be served on the person.

6012 Application in proceeding—adjournment generally

(1) The court may adjourn the hearing of an application in a proceeding.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

(2) Without limiting subrule (1), the court may adjourn the hearing of an application in a proceeding if, at the hearing—

(a) a party to the application who is represented by a solicitor does not appear either personally or by the solicitor; and

(b) the applicant produces to the court a copy of the application endorsed with the agreement of the party's solicitor to the adjournment of the hearing.

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6013 Application in proceeding—orders by consent without attendance

(1) This rule applies if, at least 2 days before the return date for an application in a proceeding or a later date set by the court for hearing the application, a document is filed in the court that—

(a) states that each party to the application—

(i) agrees to the adjournment of the application; or

Note See approved form 6.3 (Agreement to adjournment of application) AF2006-411.

(ii) consents to the orders sought in the application; or

(iii) consents to the orders sought in the application, amended to vary a time mentioned in an order sought for taking a step in the proceeding; and

(b) is signed by each party's solicitor.

(2) For subrule (1) (a) (ii) or (iii), a copy of the application may be endorsed with the consent of each party's solicitor.

(3) The court may, without any of the parties attending before the court—

(a) if the parties agree to an adjournment—adjourn the hearing to—

(i) the date agreed by the parties; or

(ii) a date decided by the court; or

(b) if the parties consent to the orders sought in the application—make the orders sought by consent; or

(c) if the parties consent to the orders sought in the application as amended—make the orders sought, as amended, by consent; or

(d) direct the parties to attend before the court on a stated date.

(4) If the court adjourns the hearing to a date decided by the court, the registrar must tell the parties the adjourned date for the hearing.

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(5) If the court directs the parties to attend before the court on a stated date, the registrar must tell the parties the stated date.

6014 Application in proceeding—further hearing

(1) This rule applies if—

(a) an application in a proceeding (the ***original application***) has been filed in the court and served; and

(b) the application is not dealt with on the return date for the application.

(2) The court may adjourn the application.

(3) A further application must be filed if the court orders it to be filed.

Note This part applies to an application for an order under this rule.

(4) The further application must be served on a party if—

(a) the court orders service on the party; or

(b) the party was not served with the original application.

6015 Application in proceeding—application under r 40

An application for an order under rule 40 (Setting aside originating process etc) in relation to an originating process must be filed within the time mentioned in rule 102 (Notice of intention to respond or defence—filing and service) for filing a notice of intention to respond to the originating process or, if the application is for an order in relation to an originating claim and no notice of intention to respond is filed, a defence.

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6016 Application in proceeding—oral application

A person may make an application in a proceeding to the court orally if—

(a) the preparation of a written application, or the filing in the court or service of a written application, would cause unreasonable delay or other prejudice to the person; or

(b) each active party to the proceeding, and, if the respondent to the application is not an active party, the respondent, agrees to the application being made orally; or

(c) an application may be made under these rules without filing or serving the application; or

(d) the court orders that the person does not have to file or serve a written application; or

(e) these rules otherwise allow the application to be made orally.

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Part 6.2A Human rights proceedings

Division 6.2A.1 Preliminary

6020 Terms used in Human Rights Act 2004

A term used in the *Human Rights Act 2004* has the same meaning in this part.

Note For example, the following terms are defined in the *Human Rights Act 2004*, dictionary:

- commission
- court
- declaration of incompatibility (see s 32)
- function of public nature (see s 40A)
- human rights (see s 5)
- ICCPR
- international law
- public authority (see s 40).

6021 Application—pt 6.2A

This part applies to a proceeding in the Supreme Court.

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Division 6.2A.2 Notice to Attorney-General and commission

6030 Application—div 6.2A.2

This division applies to a proceeding to which the *Human Rights Act 2004*, section 34 applies.

Note The *Human Rights Act 2004*, s 34, applies—

(a) if—

(i) a question arises in a proceeding in the Supreme Court that involves the application of that Act; or

(ii) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and

(b) the Territory is not a party to the proceeding.

6031 Notice—human rights proceedings

(1) This rule applies to a party to a proceeding if—

(a) the party asserts that the *Human Rights Act 2004* applies in the proceeding; or

(b) the party is seeking a declaration of incompatibility in the proceeding.

(2) The party must, within 7 days after filing the first document making the assertion or seeking the declaration, file in the court a notice stating the relevant matter mentioned in subrule (1).

Note See approved form 6.31 (Notice of a human rights matter) AF2012-196.

(3) As soon as practicable after the notice is filed, a copy of the notice must be served on—

(a) the Attorney-General and the commission; and

(b) each other active party to the proceeding.

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(4) An affidavit of service of the notice on the Attorney-General and the commission must be filed in the court before the hearing of the proceeding starts or continues.

6032 Notice—direction by court

(1) The court may, taking into account the issues in a proceeding and their relevance to the *Human Rights Act 2004*—

(a) direct a party to give notice of the proceeding to the Attorney-General and the commission; and

(b) state the content of the notice.

Note See approved form 6.31 (Notice of a human rights matter) AF2012-196.

(2) An affidavit of service of the notice on the Attorney-General and the commission must be filed in the court before the hearing of the proceeding starts or continues.

6033 Contents of notice of human rights matter

A notice of a human rights matter must state—

(a) the human right under the *Human Rights Act 2004* which allegedly applies in the proceeding, including—

(i) the relevant content of the right; and

(ii) any particular aspect of the right which allegedly applies; and

(b) the facts on which the party relies to assert that the *Human Rights Act 2004* applies to the proceeding; and

(c) if the party is seeking a declaration of incompatibility in the proceeding—

(i) that a declaration of incompatibility is being sought; and

(ii) the territory law, or provision of the law, that is allegedly inconsistent with the human right; and

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(iii) the way in which the law or provision is allegedly inconsistent with the human right.

6034 Directions hearing—human rights proceedings

(1) If a party files a notice under rule 6031—

(a) the court must set a date for a directions hearing for the proceeding; and

(b) the registrar must tell the parties the date set for the directions hearing.

Note For directions that the court may make at the directions hearing, see r 1401 (Directions generally).

(2) The date for the directions hearing must be not later than 14 days after the day the notice is served on the Attorney-General and the commission, unless the court otherwise orders.

Division 6.2A.3 Intervention of commission

6040 Human rights commissioner—application for leave to intervene

(1) This rule applies if the human rights commissioner wishes to intervene in a proceeding under the *Human Rights Act 2004*, section 36.

Note Under the *Human Rights Act 2004*, s 36, the human rights commissioner may intervene in a proceeding before a court that involves the application of that Act with the leave of the court.

(2) The human rights commissioner must file in the court an application for leave to intervene.

Note See approved form 6.33 (Application for leave to intervene) AF2012-198.

(3) The application must be supported by an affidavit setting out the reasons why leave should be given.

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(4) As soon as practicable after the application is filed, a copy of the application and the supporting affidavit must be served on—

(a) the Attorney-General; and

(b) each active party to the proceeding.

(5) If the court gives the commissioner leave to intervene, the commissioner must—

(a) file a notice of intervention; and

Note See approved form 6.32 (Notice of intervention) AF2012-197.

(b) serve a copy of the notice on—

(i) the Attorney-General; and

(ii) each active party to the proceeding.

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Part 6.2B Intervention of Attorney-General in proceedings

6045 Attorney-General—notice of intervention

(1) This rule applies if the Attorney-General wishes to intervene in a proceeding under—

(a) the *Administrative Decisions (Judicial Review) Act 1989*, section 19; or

(b) the *Court Procedures Act 2004*, section 27; or

(c) the *Human Rights Act 2004*, section 35.

(2) The Attorney-General must file in the court a notice stating that the Attorney-General intervenes in the proceeding.

Note See approved form 6.32 (Notice of intervention) AF2012-197.

(3) As soon as practicable after the notice is filed, a copy of the notice must be served on each active party to the proceeding.

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Part 6.3 Documents

Division 6.3.1 General provisions about documents for filing

6100 Application—div 6.3.1

(1) This division applies to a document that is prepared by a party to a proceeding for use by or in the court, and includes an originating process or other document starting a proceeding.

(2) However, this division does not apply to an annexure or exhibit except to the extent otherwise expressly provided.

6101 Documents—compliance with approved form

(1) If an approved form for a document requires particular information to be included in the document or a particular document (including an annexure or exhibit) to be attached to, or filed with the document, the document is properly completed only if the requirement is complied with.

Note 1 Substantial compliance with an approved form is otherwise sufficient (see Legislation Act, s 255 (4)), unless the Legislation Act, s 255 (5) applies (see note to r (3)).

Note 2 The court may, by order, dispense with compliance with these rules (see r 6 (Dispensing with rules)).

(2) Subrule (1) has effect despite the Legislation Act, section 255 (6).

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(3) To remove any doubt, this rule does not affect the Legislation Act, section 255 (5).

Note Under the Legislation Act, s 255 (5), if a form requires any of the following, substantial compliance with the form is not sufficient and the form is properly completed only if the requirement is complied with:

(a) the form to be signed;

(b) the form to be prepared in a particular way (for example, on paper of a particular size or quality or in a particular electronic form);

(c) the form to be completed in a particular way;

(d) particular information to be included in the form, or a particular document to be attached to or given with the form;

(e) the form, information in the form, or a document attached to or given with the form, to be verified in a particular way (for example, by statutory declaration).

6102 Documents—general heading style

(1) A document for use in relation to a proceeding, and for which there is an approved form, must be headed in the way set out in the form.

(2) However, a document in a civil proceeding may be headed using an abbreviation of title sufficient to identify the proceeding.

Example

AB and others

Defendants

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Subrule (2) does not apply to—

(a) an originating process; or

(b) a document to be served on a person not a party to the proceeding; or

(c) an order.

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(4) If the parties to a proceeding change, the names of the parties on each document filed after the change must reflect the state of the parties after the change.

6103 Documents—layout etc

(1) A document—

(a) must be on A4 size paper that—

(i) is white; and

(ii) is durable; and

(iii) is free from discolouration or blemishes; and

Note A document in a family violence or personal violence proceeding need not be white (see r 3803 (a)).

(b) may be single-sided (that is, with writing on 1 side of each sheet) or double-sided (that is, with writing on both sides of each sheet), but not partly single-sided and partly double-sided); and

(c) must have all its pages and all attachments securely bound together in a way satisfactory to the registrar; and

(d) must have pages (that is, the sides of the sheets that have writing) that are numbered consecutively after the first page (if any); and

(e) must have clear margins no smaller than 20mm on the top, bottom and right sides; and

(f) must have a clear margin on the left side no smaller than 25mm; and

(g) must be written—

(i) if handwritten—in legible writing; and

(ii) if typewritten—with type no smaller than 1.8mm (10 point); and

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(iii) with each line of writing separated from any previous line of writing by a space no smaller than 3mm; and

(iv) in a way that is permanent and can be photocopied to produce a copy satisfactory to the registrar.

(2) Subrule (1) (a) and (b) apply to an annexure or exhibit to a document if the annexure or exhibit is a copy of a document.

(3) Subrule (1) (c) and (d) apply to an annexure to a document as if the annexure formed part of the document.

Example

The pages of a document and its annexure must be numbered consecutively through the document and annexure (after the first page).

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) Subrule (1) (c) and (d) apply to an exhibit to a document.

(5) This rule does not apply to a document to the extent to which the nature of the document makes compliance impracticable.

(6) The registrar may dispense with compliance with any requirement of this rule.

6104 Documents—use of copies

On application by a party to a proceeding or on its own initiative, the court may give leave for a fax or other copy of a document to be used.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

6105 Documents—use of figures

Amounts, dates, mathematical expressions and numbers in a document must, as far as practicable, be expressed using figures and not words.

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6106 Documents—signing

(1) If a party is represented by a solicitor in a proceeding, a document filed in the proceeding for the party that is required to be signed must be signed by—

(a) the solicitor; or

(b) a solicitor who is the solicitor's agent for the proceeding; or

(c) another solicitor belonging to the same firm or other entity (whether as partner or employee) as the solicitor or agent.

(2) If a party is not represented by a solicitor in a proceeding, a document filed in the proceeding for the party that is required to be signed must be signed by—

(a) the party; or

(b) someone else allowed under these rules to start, defend or carry on the proceeding for the party.

Note If the party is a person with a legal disability, anything required or allowed to be done in the proceeding may be done only by the party's litigation guardian (see r 275 (3) (Person with legal disability—litigation guardian to start proceeding etc)).

(3) A person signing a document under subrule (1) or (2) (b) must state the capacity in which the person signs the document.

6107 Documents—alterations

(1) An alteration on a document must be made by—

(a) striking through the writing intended to be altered so that the original writing is still legible; and

(b) having the alteration signed or initialled by—

(i) if the document is signed—everyone who signed the document; or

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(ii) if the document is signed and witnessed—everyone who signed and witnessed the document; or

(iii) if the document is not signed, or signed and witnessed—the party filing the document.

(2) The alteration may be handwritten.

(3) However, if the alteration is handwritten, it must be—

(a) legible; and

(b) made in a way that is—

(i) permanent; and

(ii) can be photocopied to produce a copy satisfactory to the registrar.

(4) A document cannot be filed if it contains an alteration that causes a material disfigurement.

(5) In this rule:

alteration includes an alteration by omission, substitution or addition.

Note Pt 2.7 (Amendment) deals with the amendment of filed documents.

Division 6.3.2 Filing documents

6120 Filing documents—number of copies

When filing a document in the court, a person must file—

(a) the original; and

(b) enough copies for service and proof of service, if required by a territory law or an order of the court.

Note 1 An applicant for a protection order under the *Family Violence Act 2016* or *Personal Violence Act 2016* need only file 1 copy of the application for the order (see r 3803 (b)).

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

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6121 How documents may be filed

A document may be filed in the court by—

(a) delivering it to the registry personally; or

(b) sending it to the registry by post in accordance with rule 6123 (Filing documents by post); or

(c) faxing it to the registry's fax number for the filing of documents; or

(d) if filing by electronic communication is allowed under a practice note—complying with the practice note; or

(e) in the absence of a practice note under paragraph (d)—with the registrar's leave, sending it by electronic communication to the registry's email address for the filing of documents.

6122 Filing documents personally

(1) This rule applies to a document filed in the court by personal delivery to the registry.

(2) However, this rule does not apply to an exhibit or another document that does not require sealing or stamping.

(3) The registrar may—

(a) record the filing of the document and, if appropriate, seal or stamp the document; or

(b) reject the document under division 6.3.3 (Rejecting filed documents).

(4) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping.

6123 Filing documents by post

(1) This rule applies to a document filed in the court by post.

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(2) The person filing the document must send the document to the registry by prepaid post, addressed to the registrar, in an envelope marked with a note to the effect that it contains court documents.

(3) The person filing the document must also ensure the document is accompanied by the following:

(a) any copies of the document for sealing or stamping;

(b) a stamped envelope addressed to the person filing the document or the person's solicitor;

(c) if a fee is determined under the *Court Procedures Act 2004*, section 13 for filing the document—the fee in a form satisfactory to the registrar.

Note The Legislation Act, s 54 requires a filing fee to be paid before filing.

(4) The registrar may—

(a) record the filing of the document and, if appropriate, seal or stamp the document; or

(b) reject the document under division 6.3.3 (Rejecting filed documents).

(5) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping in the envelope provided by the person filing the document.

(6) If the court enters a default judgment after a request for the judgment is filed by post, the registrar must return the default judgment in the envelope provided by the person filing the request.

(7) A person files a document by post at the person's risk.

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6125 Practice notes about filing

(1) A practice note may make provision in relation to—

(a) the documents that must be filed in the court by being delivered to a registry personally; or

(b) the documents that must not be filed in the court using a particular method of filing; or

(c) filing documents in the court by electronic communication.

(2) A practice note must be complied with despite anything in these rules.

6126 Date of filing

(1) The registrar must record the date of filing in the court of each filed document.

(2) For these rules, the ***date of filing*** is the date of—

(a) for a document filed in the court by personal delivery to the registry—the day it is delivered to the registry; or

(b) for a document filed in the court by post—the day it is received at the registry; or

(c) for a document filed in the court by being faxed to the registry's fax number before 4 pm on a day the registry is open—that day; or

(d) for a document filed in the court by being faxed to the registry's fax number on a day the registry is not open or after 4 pm on a day the registry is open—the next day the registry is open; or

(e) for a document filed in the court by electronic communication under a practice note—in accordance with the practice note; or

(f) for a document filed in the court by electronic communication with the registrar's leave—

(i) before 4 pm on a day the registry is open—that day; or

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(ii) on a day the registry is not open, or after 4 pm on a day the registry is open—the next day the registry is open.

Note See also r 6145 (Filed documents initially rejected).

(3) However, if the registrar opens the registry for a document to be filed in the court—

(a) under subrule (2) (d), the date of filing for the document is the date the document is faxed to the registry's fax number; or

(b) under subrule (2) (f) (ii), the date of filing for the document is the date the document is sent by electronic communication to the registry's email address.

(4) For this rule, a document is taken to have been—

(a) faxed to the registry's fax number only if it is received at that number; or

(b) sent by electronic communication to the registry's email address only if it is received at that address.

(5) For this rule, it does not matter when the registrar records the date of filing.

(6) The date of filing must be written on the filed document.

Division 6.3.3 Rejecting filed documents

6140 Rejecting documents—noncompliance with rules etc

The registrar may reject a document that is filed in the court if—

(a) the document does not comply with division 6.3.1 (General provisions about documents for filing) as far as the document can comply; or

(b) there is an approved form for the document and the document is not properly completed; or

Note See r 6101 (Documents—compliance with approved form).

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(c) a fee determined under the *Court Procedures Act 2004*, section 13 is payable for filing the document and the fee has not been paid; or

Note The Legislation Act, s 54 requires a filing fee to be paid before filing.

(d) the document does not otherwise comply with these rules.

6141 Rejecting documents—inconvenient address for service

The registrar may reject a document that is filed in the court if the address for service stated in the document is manifestly inconvenient for a party or the court.

Note ***Address for service*** is defined in the dictionary.

6142 Rejecting documents—abuse of process etc

(1) This rule applies if a document that is filed in the court appears to the registrar on its face to be an abuse of the court's process or to be frivolous or vexatious.

(2) The registrar may—

(a) reject the document; or

(b) refer the document to a judicial officer for directions about how to deal with it.

(3) If the registrar refers the document to a judicial officer, the judicial officer may direct the registrar—

(a) to accept the document; or

(b) to reject the document; or

(c) to reject the document unless the court gives leave to accept the document.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

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(4) This rule applies to a written notification under rule 6613 (Documents and things in custody of court) as if it were a document filed in the court.

(5) In this rule:

judicial officer means—

(a) for the Supreme Court—a judge or the associate judge; or

(b) for the Magistrates Court—a magistrate.

6143 Rejecting document—registrar to give notice etc

(1) If the registrar rejects a document under this division—

(a) the registrar must give notice of the rejection, and of the grounds of the rejection, to the person who filed the document in the court; and

(b) the registrar must return the document and copies of the document filed with the document; and

(c) the document is taken not to have been filed.

(2) Subrule (1) (c) is subject to rule 6145 (Filed documents initially rejected).

Note See r 6144 in relation to costs incurred by a party in relation to a rejected document.

6144 Rejecting document—costs

Costs incurred by a party in relation to a document rejected under this division may be disallowed on assessment of the party's costs.

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6145 Filed documents initially rejected

(1) This rule applies to a document if—

(a) the registrar rejects the document under this division; but

(b) either—

(i) the registrar subsequently accepts the document; or

(ii) the court or a judicial officer subsequently directs the registrar to accept the document.

(2) The registrar must record the filing of the document in the court and, if appropriate, seal or stamp the document.

(3) If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping.

(4) The document is taken to have been filed in the court on the day it would have been filed if the registrar had not rejected the document.

Note Rule 6126 (2) (Date of filing) deals with the date of filing.

(5) If the document is rejected by the registrar (whether or not more than once), the document is taken to have been filed in the court on the day it was first filed.

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Part 6.4 Associate judge

6200 Jurisdiction exercisable by associate judge

(1) The civil jurisdiction (including the inherent jurisdiction) of the Supreme Court that is exercisable by a single judge may be exercised by the associate judge.

Examples

1 certain appeals to the Supreme Court mentioned in pt 5.3 (Appeals to Supreme Court) (see r 5051, table 5051)

2 certain questions referred to the Supreme Court mentioned in div 5.7.1 (Questions referred—Supreme Court) (see r 5800, table 5800).

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The associate judge may exercise the jurisdiction of the Supreme Court—

(a) in hearing and deciding applications for further time under the *Magistrates Court Act 1930*, section 209 (1) to file a notice of appeal; and

(b) in hearing and deciding applications for an order under the *Magistrates Court Act 1930*, section 210 about serving a notice of appeal; and

(c) in hearing and deciding applications under the *Bail Act 1992*; and

(d) in presiding at pre-trial hearings under the *Evidence (Miscellaneous Provisions) Act 1991*, division 4.2.2B.

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6201 Order that jurisdiction in proceeding be exercised by judge instead of associate judge

(1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the associate judge, a judge may order that the jurisdiction of the court in the proceeding be exercised by a judge.

(2) A judge may make an order under this rule—

(a) on application by a party to the proceeding; and

(b) at any time before the end of the proceeding before the associate judge.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If a judge makes an order under this rule, the judge may—

(a) hear and decide the proceeding; or

(b) decide an issue in the proceeding and refer the proceeding back to the associate judge and give the directions (if any) the judge considers appropriate in relation to the proceeding.

6202 Associate judge referring proceeding or issue to judge

(1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the associate judge, the associate judge may refer the proceeding or an issue in the proceeding to a judge if the associate judge considers that it would be appropriate for the proceeding or issue to be decided by a judge.

(2) If the associate judge refers the proceeding to a judge, the judge may—

(a) hear and decide the proceeding; or

(b) refer the proceeding back to the associate judge and give the directions (if any) the judge considers appropriate in relation to the proceeding.

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(3) If the associate judge refers an issue in the proceeding to a judge, the judge may decide the issue or refer the issue back to the associate judge and give the directions (if any) the judge considers appropriate in relation to the proceeding.

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Part 6.5 Registrar

6250 Jurisdiction exercisable by registrar of Supreme Court

(1) This rule applies only to the registrar of the Supreme Court.

(2) The registrar may exercise the following jurisdiction of the court:

(a) to hear and decide an application in a proceeding, other than an application—

(i) under a provision of these rules mentioned in schedule 5, part 5.1; or

(ii) mentioned in rule 6006 (2) (c) (Application—pt 6.2) if the application is opposed;

Note ***Application*** in a proceeding is defined in r 6006 (Application—pt 6.2).

(b) to hear and decide an originating application mentioned in any of the following provisions of these rules:

- rule 6 (4) (Dispensing with rules)
- rule 30 (6) (Who may start and carry on a proceeding)
- rule 211 (4) (Including parties—common issues of law or fact)
- rule 280 (10) (Litigation guardian—appointment and removal by court)
- rule 650 (2) (Discovery to identify potential defendant)
- rule 651 (2) (Discovery to identify right to claim relief);

(c) in relation to an application for default judgment under rule 1118 (3) (Default judgment—generally) or rule 1138 (3) (Default judgment—partial defence);

(d) in relation to a listing hearing under rule 1325 (Listing hearing);

(e) in relation to the setting down under rule 1326 (Special fixture) of a proceeding for trial as a special fixture;

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(f) in relation to the giving of directions under rule 1401 (Directions generally);

(g) to hear and decide a proceeding on an application for directions under rule 1403 (Decision in proceeding);

(h) the setting of a date for a directions hearing under rule 1522 (Separate decisions on questions—directions);

(i) in relation to an application mentioned in any of the following rules:

- rule 2010 (Enforcement—enforcement of Magistrates Court order in Supreme Court)
- rule 2010A (Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act)
- rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers)
- rule 2100 (Enforcement hearing—application by enforcement creditor)
- rule 2101 (Enforcement hearing—otherwise than on enforcement creditor's application)
- rule 2151 (Instalment order—application by enforcement debtor)
- rule 2201 (Seizure and sale order—application)
- rule 2218 (Seizure and sale order—additional provisions relating to land)
- rule 2219 (Seizure and sale order—power of entry for auction of land)
- rule 2302 (Debt redirection order—application)
- rule 2351 (Earnings redirection order—application)
- rule 2402 (Charging order—application)
- rule 2451 (Order for delivery of possession of land—making)

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- rule 2460 (Order for seizure and delivery of goods—making);

(j) in relation to an enforcement hearing under division 2.18.3 (Enforcement of money orders—enforcement hearings);

(k) in relation to an instalment order agreement under rule 2157 (Instalment order—instalment order agreement);

(l) in relation to the giving of directions under rule 2307 (Debt redirection order—claim by someone else);

(m) in relation to a notice of objection under rule 2311 (Debt redirection order—third person disputes liability);

(n) under division 2.20.2 (Taking of accounts), division 2.20.3 (Making of inquiries) and division 2.20.4 (Executors, administrators and trustees—accounts and commission);

(o) in relation to an application for grant of representation of the estate of a deceased person under part 3.1 (Administration and probate) (including an application under the *Administration and Probate Act 1929*, section 80 (Reseal of grant made in reciprocating jurisdiction)), other than an application in relation to which a caveat is in force or to which division 3.1.9 (Other probate proceedings) applies;

(p) in relation to an application mentioned in rule 3080 (3) (Revocation of grant—urgent order before start of proceeding);

(q) in relation to an application under part 3.8 (Foreign judgments—reciprocal enforcement);

(r) in relation to the giving of directions under rule 3565 (Judicial review—directions on return date);

(s) to make an order under rule 4050 (1) (a) or (2) (Criminal proceedings—production of person in custody);

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(t) in relation to a matter mentioned in rule 4732 (Supreme Court criminal proceedings—appearance when committed for sentence) or rule 4733 (Supreme Court criminal proceedings—appearance when committed for trial);

(u) in relation to the giving of directions under rule 4738 (Supreme Court criminal proceedings—directions);

(v) the setting of a date for a hearing under rule 5091 (Referral of appeal—procedure for leave);

(w) in relation to an application under rule 6439 (Service of originating application to recover unoccupied land);

(x) in relation to an application for leave under rule 6482 (Subpoena—service on special witness);

(y) in relation to an application for leave under rule 6603 (Subpoena to produce—leave to serve late).

(3) The registrar may also exercise the following jurisdiction of the court:

(a) under a provision of the *Australian Securities and Investments Commission Act 2001* (Cwlth) mentioned in column 2 of an item in schedule 5, part 5.3;

(b) under the following provisions of the *Bail Act 1992*:

- section 19 (Court bail—general), in relation to an unopposed application
- section 33 (Continuation of bail and undertakings);

(c) under the *Children and Young People Act 2008*, section 876A (Power of court to bring young detainee before it—civil proceeding);

(d) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence);

(e) under the *Commercial Arbitration Act 2017*, section 27A (Parties may obtain subpoenas);

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(f) under the *Corrections Management Act 2007*, section 217A (Power of court to bring detainee before it—civil proceeding);

(g) under a provision of the Corporations Act mentioned in column 2, or a provision of schedule 6 mentioned in column 3, of an item in schedule 5, part 5.2;

(h) under the *Court Procedures Act 2004*, section 79E (Court may waive requirements);

(i) under the *Crimes (Sentence Administration) Act 2005*, section 106 (Good behaviour—summons to attend court);

(j) under the *Crimes (Sentencing) Act 2005*, section 41 (Pre-sentence reports—order);

(k) under the *Legal Profession Act 2006*, division 3.2.7 (Costs assessment);

(l) under the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):

- section 11 (8) (Proof of service)
- section 17 (1) (b) (Time for appearance)
- section 30 (1) (b) (Time for service)
- section 35 (3) (Entitlement to expenses)
- section 45 (3) (Entitlement to expenses)
- section 105 (4) (Enforcement of judgments);

(m) under the *Supreme Court Act 1933*, section 55A (Hearing of bail applications).

Note The court may order the registrar to do, or not do, an act relating to the registrar's duties (see r 6904 (Mandatory order to registrar etc)).

(4) The registrar may exercise the jurisdiction of the Court of Appeal in relation to the conduct of a callover and under the following provisions:

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- rule 5416 (2) (d) (Appeals to Court of Appeal—notice of contention)
- rule 5432 (Appeals to Court of Appeal—settlement of appeal papers)
- rule 5535 (1) (a) and (2) (Appeals to Court of Appeal—order for production of prisoner).

(5) If the registrar may exercise the jurisdiction of the court to hear and decide an application in a proceeding about a matter under subrule (2) (a), the registrar may, on the registrar's own initiative, exercise the jurisdiction of the court in relation to the matter even if there is no application.

(6) If, under this rule, the registrar may exercise the jurisdiction of the court in relation to a matter, the registrar may exercise the jurisdiction of the court to make any order the court could make, and do anything else the court could do, in relation to the matter, including making any order that the court could make, or doing anything the court could do, on its own initiative in relation to the matter.

Example of thing court could do

issue warrant

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

6251 Jurisdiction exercisable by registrar of Magistrates Court

(1) This rule applies only to the registrar of the Magistrates Court.

(2) The registrar may exercise the following jurisdiction of the court:

(a) to hear and decide an application in a proceeding, other than an application—

(i) under a provision of these rules mentioned in schedule 5, part 5.4; or

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(ii) mentioned in rule 6006 (2) (c) (Application—pt 6.2) if the application is opposed;

Note ***Application*** in a proceeding is defined in r 6006 (Application—pt 6.2).

(b) to hear and decide an originating application mentioned in any of the following provisions of these rules:

- rule 650 (2) (Discovery to identify potential defendant);
- rule 651 (2) (Discovery to identify right to claim relief);

(c) in relation to an application for default judgment under rule 1118 (3) (Default judgment—generally) or rule 1138 (3) (Default judgment—partial defence);

(d) in relation to a listing hearing under rule 1325 (Listing hearing);

(e) in relation to the setting down under rule 1326 (Special fixture) of a proceeding for trial as a special fixture;

(f) in relation to the giving of directions under rule 1401 (Directions generally);

(g) to hear and decide a proceeding on an application for directions under rule 1403 (Decision in proceeding);

(h) the setting of a date for a directions hearing under rule 1522 (Separate decisions on questions—directions);

(i) in relation to an application mentioned in any of the following rules:

- rule 2010 (Enforcement—enforcement of Magistrates Court order in Supreme Court)
- rule 2010A (Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act)
- rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers)

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- rule 2100 (Enforcement hearing—application by enforcement creditor)
- rule 2101 (Enforcement hearing—otherwise than on enforcement creditor's application)
- rule 2151 (Instalment order—application by enforcement debtor)
- rule 2201 (Seizure and sale order—application)
- rule 2302 (Debt redirection order—application)
- rule 2351 (Earnings redirection order—application)
- rule 2460 (Order for seizure and delivery of goods—making);

(j) in relation to an enforcement hearing under division 2.18.3 (Enforcement of money orders—enforcement hearings);

(k) in relation to an instalment order agreement under rule 2157 (Instalment order—instalment order agreement);

(l) in relation to the giving of directions under rule 2307 (Debt redirection order—claim by someone else);

(m) in relation to a notice of objection under rule 2311 (Debt redirection order—third person disputes liability);

(n) to make an order under rule 3920 (4) (Arbitration—including other parties);

(o) in relation to making an order to dispense with the requirement to hold a dispute resolution conference or excusing a party from attending a dispute resolution conference under rule 3945 (Dispute resolution conference—listings etc);

(p) in relation to making a direction for a further dispute resolution conference under rule 3948C (1) (a) (Dispute resolution conference—court orders on outcome of conference);

(q) in relation to making a direction for the conduct of an arbitration under rule 3948C (1) (b);

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(r) to make directions under rule 3967 (2) (Registered agreement—application for amendment or cancellation);

(s) to make an order under rule 4050 (1) (a) or (2) (Criminal proceedings—production of person in custody);

(t) in relation to an application under rule 6439 (Service of originating application to recover unoccupied land);

(u) in relation to an application for leave under rule 6482 (Subpoena—service on special witness);

(v) in relation to an application for leave under rule 6603 (Subpoena to produce—leave to serve late).

(3) The registrar may also exercise the following jurisdiction of the court:

(a) under the *Bail Act 1992*, section 19;

(b) under the *Children and Young People Act 2008*, section 876A (Power of court to bring young detainee before it—civil proceeding);

(c) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence);

(d) under the *Commercial Arbitration Act 2017*, section 27A (Parties may obtain subpoenas);

(e) under the *Corrections Management Act 2007*, section 217A (Power of court to bring detainee before it—civil proceeding);

(f) under the *Court Procedures Act 2004*, section 72 (1) (l) (Court proceedings involving children or young people not open to public);

(g) under the following provisions of the *Crimes (Forensic Procedures) Act 2000*:

- section 37 (Securing the presence of suspects at hearings—suspect not in custody)

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- section 77A (2) (Securing the presence of serious offender at hearing—offender in custody)
- section 77B (Securing the presence of serious offender at hearing—offender not in custody);

(h) under the *Crimes (Sentence Administration) Act 2005*, section 106 (Good behaviour—summons to attend court);

(i) under the following provisions of the *Family Violence Act 2016*:

- part 3 (Family violence orders) other than section 32 (Special interim orders—final application decided) and division 3.5 (Final orders)
- section 47 (Interim order sought)
- section 53 (Applicant not present at return of application)
- section 54 (Respondent not present at return of application)
- section 54A (Neither party present at return of application)
- section 60 (Closed hearings in special circumstances)
- section 70A (2) (Personal service of application on respondent)
- section 70B (Dismissal of application for non-service)
- section 70E (Service of documents by police)
- section 71 (Police officer party to proceeding—substitution of applicant etc)
- section 71A (Request for further particulars)
- section 73 (Costs)
- section 75 (Child respondents)
- section 76 (Representation—party with impaired decision-making ability)
- section 77 (Consent orders—party with impaired decision-making ability)
- section 81 (Litigation guardian—removal)

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- section 83 (Amendment of protection orders) if the other party to the application for amendment of the protection order consents to the application or is not present, personally or by a representative, when the application is returned before the Magistrates Court
- section 84 (Final orders—temporary amendment)
- section 85 (General interim orders made by consent—extension)
- section 86 (2) (Final orders—extension)
- section 87 (Special interim orders—application for review)
- section 88 (Special interim orders—review);
- section 134 (Decision about hearing of application);

(j) under the following provisions of the *Personal Violence Act 2016*:

- part 3 (Protection orders) other than division 3.5 (Final orders) and section 37 (3) (b) (Final orders—respondent's firearms)
- section 38 (2) (Firearm licences—other conditions and orders) if the registrar makes a non-cancellation order under section 37 (3) (a)
- section 41 (Interim order sought)
- section 48 (Applicant not present at return of application)
- section 49 (Respondent not present at return of application)
- section 49A (Neither party present at return of application)
- section 55 (Closed hearings in special circumstances)
- section 64A (2) (Personal service of application on respondent)
- section 64B (Dismissal of application for non-service)
- section 64E (Service of documents by police)
- section 65 (Police officer party to proceeding for personal protection order—substitution of applicant etc)

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- section 65A (Request for further particulars)
- section 67 (Costs)
- section 69 (Child respondents)
- section 70 (Representation—party with impaired decision-making ability)
- section 71 (Consent orders—party with impaired decision-making ability)
- section 75 (Litigation guardian—removal)
- section 77 (Amendment of protection orders) if the other party to the application for amendment of the protection order consents to the application or is not present, personally or by a representative, when the application is returned before the Magistrates Court
- section 78 (Final orders—temporary amendment)
- section 79 (Interim orders made by consent—extension)
- section 80 (2) (Final orders—extension);

(k) under the following provisions of the *Magistrates Court Act 1930*:

- section 72A (Bail application hearings—audiovisual links)
- section 84 (1) (Particular cases may be adjourned) in relation to a proceeding in which the defendant is not in custody and the informant does not oppose bail
- section 85 (2) (b) (Proceeding if either party not present at adjourned hearing)
- section 109 (Dismissal or adjournment in absence of informant);
- section 154D (Fine defaulters—imprisonment);

(l) under the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):

- section 11 (8) (Proof of service)
- section 17 (1) (b) (Time for appearance)

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- section 30 (1) (b) (Time for service)
- section 35 (3) (Entitlement to expenses)
- section 45 (3) (Entitlement to expenses)
- section 105 (4) (Enforcement of judgments);

(m) under the *Victims of Crime (Financial Assistance) Act 1983*, section 56;

(n) under the *Workers Compensation Act 1951*, section 79.

Note The court may order the registrar to do, or not do, an act relating to the registrar's duties (see r 6904 (Mandatory order to registrar etc)).

(4) If the registrar may exercise the jurisdiction of the court to hear and decide an application in a proceeding about a matter under subrule (2) (a), the registrar may, on the registrar's own initiative, exercise the jurisdiction of the court in relation to the matter even if there is no application.

(5) If, under this rule, the registrar may exercise the jurisdiction of the court in relation to a matter, the registrar may exercise the jurisdiction of the court to make any order the court could make, and do anything else the court could do, in relation to the matter, including making any order that the court could make, or doing anything the court could do, on its own initiative in relation to the matter.

Example of thing court could do

issue warrant

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(6) A deputy registrar may exercise the jurisdiction of the court under this rule only if authorised in writing by the Chief Magistrate.

(7) An authorisation under subrule (6) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

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6252 Registrar's powers—postponement of hearing

(1) This rule applies if a judicial officer—

(a) is not available to exercise the jurisdiction of the court at the time set for the hearing of a proceeding; and

(b) is unlikely to become available within a reasonable time.

(2) The registrar may, if asked by a party to the proceeding, postpone the hearing to another date or time set by the registrar.

(3) In this rule:

judicial officer means—

(a) for the Supreme Court—a judge or the associate judge; or

(b) for the Magistrates Court—a magistrate.

6253 Registrar's powers—subpoenas

(1) This rule applies to a subpoena issued in a proceeding if the jurisdiction of the court in the proceeding is to be, or is being exercised, by the registrar.

(2) The registrar may hear and decide an objection under rule 6609 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) in relation to the subpoena instead of referring the objection to the court.

6254 Order that jurisdiction in proceeding be exercised by judicial officer other than registrar

(1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the registrar, a judicial officer of the court may order that the jurisdiction of the court in the proceeding be exercised by a judicial officer of the court.

(2) A judicial officer may make an order under this rule—

(a) on application by a party to the proceeding; and

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(b) at any time before the end of the proceeding before the registrar.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) If a judicial officer makes an order under this rule, the judicial officer exercising the jurisdiction of the court in the proceeding may—

(a) hear and decide the proceeding; or

(b) decide an issue in the proceeding and refer the proceeding back to the registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.

(4) In this rule:

judicial officer means—

(a) for the Supreme Court—a judge or the associate judge; or

(b) for the Magistrates Court—a magistrate.

6255 Registrar referring proceeding or issue to judicial officer

(1) If the jurisdiction of the court is to be, or is being, exercised in a proceeding by the registrar, the registrar may refer the proceeding or an issue in the proceeding to a judicial officer of the court if the registrar considers that it would be appropriate for the proceeding or issue to be decided by a judicial officer.

(2) If the registrar refers the proceeding to a judicial officer, the judicial officer may—

(a) hear and decide the proceeding; or

(b) refer the proceeding back to the registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.

(3) If the registrar refers an issue in the proceeding to a judicial officer, the judicial officer may decide the issue or refer the issue back to the

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registrar and give the directions (if any) the judicial officer considers appropriate in relation to the proceeding.

(4) In this rule:

judicial officer means—

(a) for the Supreme Court—a judge or the associate judge; or

(b) for the Magistrates Court—a magistrate.

6256 Appeals from registrar's orders etc

(1) This rule applies to the following orders:

(a) an order made by the registrar of the Supreme Court in the exercise of jurisdiction given under rule 6250 (Jurisdiction exercisable by registrar of Supreme Court);

(b) an order made by the registrar of the Magistrates Court in a civil proceeding;

(c) an order made by the registrar under rule 6253 (Registrar's powers—subpoenas).

Note 1 This rule does not apply to a family or personal violence proceeding (see r 3803 (c)).

Note 2 ***Order*** is defined in the dictionary (see also def ***made***).

(2) If the order is made by the registrar of the Supreme Court, and a party to the proceeding is dissatisfied with the order, the party may appeal, in accordance with these rules, to the Supreme Court constituted by a judge or the associate judge.

Note See the *Supreme Court Act 1933*, s 8 (Exercise of jurisdiction) and r 6200 (Jurisdiction exercisable by associate judge).

(3) If the order is made by the registrar of the Magistrates Court, and a party to the proceeding is dissatisfied with the order, the party may appeal, in accordance with these rules, to the Magistrates Court constituted by a magistrate.

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(4) The appeal is a rehearing of the matter anew.

(5) However, each party to the appeal may, subject to subrule (6) and any proper objections about admissibility, rely on any affidavit used, and any evidence given orally, before the registrar.

(6) If a party to the appeal requires the attendance of someone for examination at the hearing of the appeal, an affidavit made, or evidence given, by the person must not be used unless the person attends for examination or the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(7) The court may—

(a) confirm, amend or set aside the registrar's order; and

(b) make any other order the court considers appropriate.

Note See pt 5.2 for the procedure to be followed for an appeal against an order of the registrar.

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Part 6.6 Registry

6300 Office hours

(1) The registry must be open between 9.15 am and 4.15 pm on each day other than—

(a) a Saturday, Sunday or public holiday; and

(b) a day that falls between 26 December in a year and 1 January in the following year.

(2) The registrar may open or close the registry at other times.

(3) The registrar may direct that the registry is to be closed between 1.00 pm and 2.00 pm.

6301 Registrar's duties

The registrar must—

(a) register all records, orders and convictions of the court; and

(b) keep an account of all proceedings of the court; and

(c) take charge, and keep an account, of all court fees, fines, penalties and costs and other amounts payable or paid into court, and of all amounts paid out of court.

6302 Cause book

(1) The registrar may keep a cause book.

(2) The cause book—

(a) must be kept in accordance with the directions of the court; and

(b) may be kept in electronic form.

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(3) The registrar must record in the cause book, for each originating process filed—

(a) the distinguishing number or other unique identifier given to the proceeding under rule 71 (Numbering etc of proceedings); and

(b) the date when—

(i) the process was filed in the court; or

(ii) if the proceeding was started by oral originating application—the application was made; and

(c) the other information that the court directs; and

(d) any other information required under a territory law.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(4) The registrar must also include in the cause book any other information required under a territory law.

Note Rule 3310 (Cross-vesting—procedure following transfer of proceeding to court) requires certain information to be included in the cause book.

(5) The registrar may record any other information in the cause book.

(6) This rule applies only to the Supreme Court.

6303 Registrar to keep seals

(1) The registrar of the Supreme Court must keep the following seals:

(a) the seal of the Court of Appeal;

(b) the seal of the Supreme Court.

(2) The registrar of the Magistrates Court must keep the following seals:

(a) the seal of the Magistrates Court;

(b) the seal of the Coroner's Court;

(c) the seal of the Childrens Court;

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(d) the seal of the Industrial Court;

(e) the seal of the Family Violence Court;

(f) the seal of the Galambany Court.

6304 Documents—sealing and stamping

(1) A document must be sealed if the document is—

(a) issued by the court; and

(b) required to be sealed under these rules.

(2) The registrar may stamp a copy of a document to indicate that it is a copy of a filed document if—

(a) the document has been filed by a party; and

(b) a copy of the document must or may be served on another party.

6305 Issue of commissions

If a territory law requires the court to issue a commission, the registrar must issue the commission.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

6306 Duplicate sealed etc documents

(1) This rule applies if the registrar is satisfied, by affidavit or otherwise, that a sealed or stamped document has been lost or destroyed.

(2) The registrar may issue a duplicate copy of the document.

6307 Delegation by registrar

(1) The registrar of the court may delegate the registrar's functions under a territory law to a public servant.

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(2) This rule does not apply to functions in the exercise of the court's jurisdiction.

Note 1 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Note 2 A ***territory law*** includes these rules (see Legislation Act, s 98).

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Part 6.7 Time

Note to pt 6.7

The Legislation Act contains provisions that apply in working out periods of time, including the following:

- s 151 (Working out periods of time generally)
- s 151A (Periods of time ending on non-working days)
- s 151B (Doing things for which no time is fixed).

6350 Time—certain days excluded in working out

(1) This rule applies if, under these rules or an order of the court, something must or may be done within a particular period of time.

(2) If the period is 5 days or less, any day when the registry is closed is excluded in working out when the thing must or may be done.

Example

An application must be served at least 2 days before the return date for the application under rule 6008 (Application in proceeding—filing and service). If the return date is a Monday, the weekend before the return date is excluded in working out the 2-day period, and the application must be served no later than Wednesday before the return date.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Any day in the period beginning on 25 December and ending on 1 January is excluded in working out when the thing must or may be, or is, done.

6351 Time—extending and shortening by court order

(1) This rule applies if, under these rules or an order of the court, something must or may be done in a proceeding within a particular period of time (however expressed).

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(2) On application by a party to the proceeding, the court may, by order, extend or shorten the period.

Note 1 The Legislation Act, s 151C (Power to extend time) applies to this power.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 3 Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

6352 Time—fixing by court order

(1) This rule applies if—

(a) under these rules or an order of the court, something must or may be done in or in relation to a proceeding; but

(b) no time is provided for doing the thing.

(2) On application by a party to the proceeding, the court may, by order, fix the period within which the thing may or must be done.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Part 6.8 Service

Division 6.8.1 Service—preliminary

6400 Application—pt 6.8

This part applies to a document that is required or allowed under these rules to be served, whether the word ‘serve’, ‘give’, ‘notify’, ‘send’, ‘tell’ or any other word is used.

Note 1 The following rules do not apply to a family or personal violence proceeding (see r 3803):

- r 6103 (1) (a) (i) (Documents—layout etc)
- r 6120 (b) (Filing documents—number of copies)
- r 6256 (Appeals from registrar’s orders etc)
- div 6.8.3 (Service—Magistrates Court)
- r 6430 (Service in Australia but outside ACT)
- r 6435 (Service on children)
- r 6436 (Service on people with mental disabilities)
- r 6460 (Substituted service)
- r 6464 (4) (Acceptance of service by solicitor)
- r 6467 (2) (a) (iii) (Proof of service)
- r 6469 (2) (b) (Change of address for service).

Note 2 The following rules do not apply to a criminal proceeding (see r 4006):

- r 6412 (Service of originating process by post—Magistrates Court)
- r 6413 (Doubtful service—Magistrates Court)
- r 6421 (Service by filing)
- div 6.8.5 (Service—particular cases)
- r 6460 (Substituted service)
- r 6461 (Informal service)
- r 6462 (Service on agent)

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- r 6463 (Service under contract)
- div 6.8.9 (Service out of Australia)
- div 6.8.11 (Service of foreign legal process in the ACT)
- div 6.8.12 (Service under the Hague Convention).

6401 Service of filed documents

(1) If a party files a document in a proceeding, the party must serve sealed or stamped copies of the document on each other active party.

(2) This rule does not apply to an application allowed under a territory law to be filed in the court without being served on another party.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

Division 6.8.2 Personal service

6405 How document is personally served

(1) To serve a document personally on a person, the person serving the document must give the person—

(a) if the original of the document is sealed—a sealed copy of the document; or

(b) in any other case—a stamped copy of the document.

(2) However, if the person does not accept the copy, the person serving the document may serve it by putting the copy down in the person's presence and telling the person in general terms what it is.

(3) Also, if the person serving the document is prevented from approaching the person by violence or threat of violence, the person serving the document may serve it by putting the copy down as near as practicable to, but in the sight of, the person being served.

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(4) For this rule, it is not necessary to show that the original of the document was served.

Division 6.8.3 Service—Magistrates Court

6410 Application—div 6.8.3

All documents in a proceeding in the Magistrates Court, including a document required by these rules to be served on a person personally, may be served in accordance with this division, unless a territory law expressly provides otherwise.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

6411 Service on individuals generally—Magistrates Court

(1) A document in a proceeding, other than a subpoena, may be served on an individual—

(a) by serving the document personally on the individual; or

(b) by serving the document on the individual in accordance with rule 6420 (Ordinary service—address for service); or

(c) if the individual does not have an address for service—by leaving a sealed or stamped copy of the document at the last-known home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.

Note 1 Rule 6431 (Service on corporations—generally) and r 6432 (Service on corporations—additional ways for all corporations) deal with service on corporations.

Note 2 A subpoena must be served personally on the addressee (see r 6605 (Service of subpoena)).

(2) To remove any doubt, subrule (1) (b) and (c) apply to the document whether or not the document is required by these rules to be served personally.

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6412 Service of originating process by post—Magistrates Court

(1) The plaintiff may serve an originating process by post by sending a sealed copy by prepaid post in accordance with subrule (2) if the defendant's address stated in the process is an address in the ACT.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) The copy must be sent in an envelope—

(a) addressed to the defendant at the defendant's address stated in the originating process; and

(b) marked with a return address.

(3) The return address must be the registry's address, but must not be identified as such.

(4) If the plaintiff serves an originating process under this rule, the plaintiff must complete and file a certificate of postal service for the process.

Note See approved form 6.4 (Certificate of postal service) AF2006-412.

(5) If the plaintiff completes and files a certificate of postal service for the originating process, the plaintiff is taken to have served the process personally on the defendant.

(6) However, if the envelope containing the originating process is returned to the registry by the postal authority as not having been delivered to the defendant—

(a) the plaintiff is not taken to have served the process on the defendant; and

(b) the registrar must—

(i) if judgment has been entered on the basis of the postal service—

(A) set aside the judgment; and

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(B) if an enforcement proceeding has been issued—withdraw the proceeding; and

(ii) tell the plaintiff—

(A) that the process has not been served; and

(B) if judgment has been set aside—that judgment has been set aside.

6413 Doubtful service—Magistrates Court

(1) This rule applies if—

(a) an originating process or other document in a proceeding has been served on a person under rule 6411 (1) (c) (Service on individuals generally—Magistrates Court) or rule 6412 (Service of originating process by post—Magistrates Court); and

(b) the court is satisfied that—

(i) the document did not come to the knowledge of the person within a reasonable time; or

(ii) there is doubt about whether the document came to the knowledge of the person within a reasonable time.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) The court must not allow any further step in the proceeding to be taken against the person.

(3) On application by the person or a party to the proceeding, or on its own initiative, the court must—

(a) strike out or adjourn the proceeding; or

(b) order that the document be re-served on the person in the way (if any) stated in the order; or

(c) if judgment has been entered because the document was taken to be served—set aside the judgment; or

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(d) make any other order it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 6.8.4 Ordinary service

6420 Ordinary service—address for service

If a document is not required by these rules to be served personally on a person, the document may be served on the person—

(a) by serving it personally on the person; or

(b) by leaving a sealed or stamped copy at the person's address for service; or

(c) by sending a sealed or stamped copy by prepaid post, addressed to the person, at the person's address for service; or

(d) if the person's address for service includes a postbox at a post office in the ACT—by sending a sealed or stamped copy by prepaid post, addressed to the person, at the person's postbox; or

(e) if the person's address for service includes a document exchange box number—by leaving a sealed or stamped copy, addressed to the person, in the exchange box or at a collection point of the document exchange for delivery to the exchange box; or

(f) if the person's address for service includes a fax number—by faxing a sealed or stamped copy to the fax number; or

(g) if the person's address for service includes an email address—by sending a copy by electronic communication to the email address; or

(h) if the document to be served is from the registrar's office, the person has a solicitor, and the solicitor has a collection box in the office—by leaving a copy of the document in the solicitor's collection box.

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6421 Service by filing

(1) This rule—

(a) applies if a defendant—

(i) has not filed in the court a notice of intention to respond or defence; or

(ii) has not given an address for service; and

(b) does not apply to a document that must be served personally.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4007 (Criminal proceedings—service on accused person by filing if no address for service)).

(2) A document may be served on the defendant by—

(a) filing it in the court; and

(b) sending a sealed or stamped copy by prepaid post, addressed to the defendant, at the defendant's last-known address.

(3) A document filed under this rule must state on its first page that it is filed under this rule.

Division 6.8.5 Service—particular cases

Note to div 6.8.5

This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

6430 Service in Australia but outside ACT

(1) This rule applies only to service of an originating process outside the ACT but in Australia.

(2) The originating process must be served in accordance with the *Service and Execution of Process Act 1992* (Cwlth).

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(3) In this rule:

Australia includes the external territories.

6431 Service on corporations—generally

(1) A document may be served on a corporation under these rules in a way provided—

(a) for the service of documents on the corporation under the Corporations Act or another applicable law; or

(b) by rule 6432 (Service on corporations—additional ways for all corporations).

Note 1 **Meaning of *corporation***

Corporation includes a body politic or corporate (see Legislation Act, dict, pt 1).

Note 2 **Corporations Act**

- the Corporations Act, s 109X provides non-exhaustively for the service of documents on a company registered under that Act. The section does not apply to a document that may be served under the *Service and Execution of Process Act 1992* (Cwlth) (***SEPA***), s 9 (see s 9 (9))
- the Corporations Act, s 601CX provides for service of documents on a body corporate registered under that Act, pt 5B.1 (Registering a body corporate as a company). The section does not apply to a document that may be served under SEPA, s 9 (see s 9 (9)).

Note 3 **Service and Execution of Process Act**

SEPA, s 9 provides exhaustively for service of documents under that Act on a company or registered body corporate (see also s 15 (3)). SEPA, s 10 provides non-exhaustively for service of documents under that Act on any other body corporate (but see s 15 (4) for an originating process). SEPA, s 15 (5) provides for service of an originating process under that Act on a body politic.

Note 4 **ACT legislation—general**

The Legislation Act, pt 19.5 provides non-exhaustively for the service of documents on corporations generally (including territory agencies).

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Note 5 **ACT legislation—specific**

- the *Associations Incorporation Act 1991*, s 122 provides non-exhaustively for the service of documents and process on an incorporated association under that Act
- the *Community Title Act 2001*, s 59 provides for an address for service for a body corporate under that Act (see also Legislation Act, s 246, def ***business address***)
- the *Cooperatives Act 2002*, s 461 provides non-exhaustively for the service of documents on a foreign cooperative by post
- the *Unit Titles Act 2001*, s 79 provides non-exhaustively for the service of documents on an owners corporation under that Act.

Note 6 **Service on governments**

The *Judiciary Act 1903* (Cwlth), s 63 provides for service of process on the Commonwealth or a State. The *Court Procedures Act 2004*, s 33 and s 34 provide for service on the Territory and its Ministers.

(2) For any provision of these rules requiring personal service of a document, service of the document on a corporation in a way mentioned in subrule (1) is taken to be personal service of the document on the corporation.

6432 Service on corporations—additional ways for all corporations

(1) A document may be served on a corporation under these rules by leaving it at, or sending it by post to, the corporation's registered office.

(2) This rule does not affect the operation of any other law that authorises or requires service of a document otherwise than as provided under this rule.

Note The note to r 6431 (1) sets out other applicable laws.

(3) In this rule:

registered office, for a corporation, includes—

(a) if the corporation has a registered office under the Corporations Act—that office; and

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(b) if under a territory law or a law of the Commonwealth a document may be served on the corporation by leaving it at, or sending it by post to, a place—that place; and

(c) if paragraphs (a) and (b) do not apply in relation to the corporation but it has an office or place of business in the ACT—that office or place.

6433 Service of originating process on partnership

(1) An originating process against a partnership must be served in accordance with these rules—

(a) on at least 1 of the partners; or

(b) on someone at the partnership's main place of business in the ACT who appears to have control or management of the partnership's business at the place; or

(c) for an incorporated limited partnership—at the partnership's registered office.

(2) If the originating process is served under subrule (1), each of the partners who were partners in the partnership when the originating process was issued, including a partner who was outside the ACT at the time, is taken to have been served.

(3) However, if the plaintiff knows that the partnership has been dissolved before the proceeding is started, the originating process must be served on everyone sought to be made liable.

(4) To remove any doubt, if the partnership has been dissolved before the proceeding is started, but the plaintiff does not know it has been dissolved, subrules (1) and (2) apply as if the partnership had not been dissolved.

(5) The originating process must also be served on anyone the plaintiff seeks to make liable as a partner but who was not a partner when the originating process was issued.

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(6) In this rule:

registered office, of an incorporated limited partnership, means the registered office kept under the *Partnership Act 1963*, section 90.

6434 Service on defendant operating under business name

(1) This rule applies in relation to a person if—

(a) the person (the ***defendant***) is carrying on business under a business name; and

(b) a proceeding is started against the defendant under the business name.

(2) The originating process for the proceeding may be served on the defendant—

(a) if the business name is registered under the *Business Names Registration Act 2011* (Cwlth)—

(i) by serving it personally on someone at the address shown in the Commonwealth business names register as the address for service who appears to be at least 16 years old and to be employed at the business; or

(ii) by sending it by prepaid post, addressed to the defendant, to any place where business is carried on under the registered name, whether or not the place is in the ACT; or

(b) if the business name is not registered under the *Business Names Registration Act 2011* (Cwlth)—by serving it personally on someone at the place of business who appears—

(i) to have control or management of the business at the place; and

(ii) to be at least 16 years old.

(3) Any other document for the proceeding may be served on the defendant—

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(a) as mentioned in subrule (2); or

(b) by sending it by prepaid post, addressed to the defendant, to any place where business is carried on, whether or not the place is in the ACT.

(4) For any provision of these rules requiring personal service of a document on the defendant, service of the document in accordance with subrule (2) or (3) is taken to be personal service of the document on the defendant.

(5) In this rule:

Commonwealth business names register means the business names register under the *Business Names Registration Act 2011* (Cwlth), section 22.

6435 Service on children

(1) A document otherwise required or allowed under these rules to be served on a child for a proceeding must be served instead on the person who is the child's litigation guardian for the proceeding.

Note The Legislation Act, dict, pt 1 defines ***child*** as an individual who is under 18 years old.

(2) If the child does not have a litigation guardian for the proceeding, the document must be served instead on—

(a) if the child is at least 16 years old—the child; or

(b) the child's parent or guardian; or

(c) if there is no parent or guardian—

(i) an adult who has parental responsibility for the child under the *Children and Young People Act 2008*; or

(ii) if there is no-one under subparagraph (i)—an adult who otherwise has care of the child or with whom the child lives.

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(3) For any provision of these rules requiring personal service of a document, personal service of the document on a person (including the child) under subrule (1) or (2) is taken to be personal service on the child.

6436 Service on people with mental disabilities

(1) A document otherwise required or allowed under these rules to be served on a person for a proceeding with a mental disability who is an adult (the ***relevant person***) must be served instead on—

(a) the person who is the relevant person's litigation guardian for the proceeding; or

(b) if there is no-one under paragraph (a)—a person who is entitled under rule 276 (2) (Who may be litigation guardian) to be the relevant person's litigation guardian for the proceeding; or

(c) if there is no-one under paragraph (a) or (b)—

(i) an adult who has the care of the relevant person; or

(ii) an adult with whom the relevant person lives.

Note ***Person with a mental disability*** is defined in the dictionary.

(2) For any provision of these rules requiring personal service of a document, personal service of the document on a person under subrule (1) is taken to be personal service on the relevant person.

6437 Service on detainees

(1) A document otherwise required or allowed under these rules to be served on a detainee must be served on the person in charge of the place where the detainee is being detained.

(2) For any provision of these rules requiring personal service of a document, personal service of the document on a person under subrule (1) is taken to be personal service on the detainee.

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(3) In this rule:

detainee means a person who is a full-time detainee under the *Crimes (Sentence Administration) Act 2005*.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4009 (Criminal proceedings—service of documents when unrepresented accused person in custody)).

6438 Service if no-one found at party's address for service

(1) This rule applies to a party to a proceeding if the party does not have a solicitor, and no-one can be found at the party's address for service.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8) and see also r 4008 (Criminal proceedings—service if no-one found at accused person's address for service)).

(2) Any document in the proceeding may be served on the party by leaving a copy at the party's address for service in a position where it is reasonably likely to come to the party's attention.

(3) This rule does not apply to a document that is required under a territory law to be served personally on the party.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

6439 Service of originating application to recover unoccupied land

(1) This rule applies if an originating application in a proceeding to recover unoccupied land cannot be served on the defendant without unreasonable delay or expense.

(2) The court may order that the application may be served by attaching a stamped copy of the application to a door of a house, or to something else at another conspicuous place, on the land.

(3) An order under subrule (2) may direct that the application be taken to be served on the defendant at the end of a stated time.

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(4) If an application has been served by attaching a stamped copy of the application to something at a conspicuous place on the land other than under an order under subrule (2), the court may order that the application be taken to be served on the defendant on a date stated in the order.

(5) Service under this rule is taken to be personal service.

(6) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(7) An application under this rule is made by filing in the court—

(a) a draft of the order sought; and

(b) an affidavit in support of the order.

(8) The draft order and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(9) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

Note For the jurisdiction of the Magistrates Court in relation to title to land, see the *Magistrates Court Act 1930*, s 264 (Proceedings affecting title to land).

Division 6.8.6 Time of service

6450 Time of service at address for service

Service of a document at an address for service is taken to have been made—

(a) if the document is left with someone or at a place in accordance with these rules—

(i) if the document is left before 4 pm on a day—on that day; or

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(ii) if the document is left at or after 4 pm on a day—on the next day; or

(b) if the document is served by post in Australia or an external territory in accordance with these rules—7 days after the day it is posted, unless the contrary is proved; or

(c) if the document is left in a document exchange box or at a collection point of an authorised DX system in accordance with these rules—2 days after the day it is left; or

(d) if the document is faxed in accordance with these rules—1 day after the day it is faxed; or

(e) if the document is sent by electronic communication to an email address in accordance with these rules—

(i) if the document is sent before 4 pm on a day—on that day; or

(ii) if the document is sent at or after 4 pm on a day—on the next day.

Division 6.8.7 Service—other

6460 Substituted service

(1) This rule applies if these rules require or allow a document in a proceeding to be served in a particular way (the ***authorised way***).

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) A party to the proceeding may apply to the court for an order allowing the document to be served in another way (the ***alternative way***).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) The court may make the order if satisfied that—

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(a) it is impracticable, for any reason, for the document to be served in the authorised way; and

(b) the alternative way is reasonably likely to bring the document to the attention of the person to be served.

(4) If the court makes the order, it may, in the order, provide that the document is taken to have been served on the happening of a stated event, at a stated time or at the end of a stated period.

(5) The court may make an order under this rule even though the person to be served is not in the ACT or Australia or was not in the ACT or Australia when the proceeding started.

(6) For any provision of these rules requiring personal service of a document on a person, service of the document on the person in accordance with an order under subrule (3) is taken to be personal service of the document on the person.

6461 Informal service

(1) This rule applies if—

(a) a document is not served on a person as required or allowed by this part but the document or a copy of it comes to the notice of the person; and

(b) the court is satisfied that the document came to the person's notice on or before a particular day.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) The court may, by order, decide that the document was served on the person on the day stated in the order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) For any provision of these rules requiring personal service of a document on a person, the document is taken to have been personally served on the person on that day.

6462 Service on agent

(1) This rule applies if a person living or carrying on a business outside the ACT (the ***principal***) enters into a contract in the ACT through an agent living or carrying on business in the ACT.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) The court may, without deciding the agent's authority or business relationship with the principal, give leave to a person to serve an originating process or notice of appeal relating to a proceeding arising out of the contract on the agent.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

(3) If the court gives leave under subrule (2), the court must state the time within which the principal must file a notice of intention to respond or defence.

(4) If the person serves the originating process or notice of appeal on the agent under this rule, the person must immediately send to the principal by prepaid post, addressed to the principal, at the principal's address outside the ACT a copy—

(a) of the originating process or notice of appeal; and

(b) of the order giving leave under subrule (2).

6463 Service under contract

(1) This rule applies if, before or after a proceeding starts, parties to the proceeding agree that a document relating to the proceeding may be served on 1 or more of the parties, or someone else for 1 or more of

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the parties, in a way or at a place, in the ACT or somewhere else, stated in the agreement.

Note This rule does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

(2) The document may be served in accordance with the agreement.

(3) For any provision of these rules requiring personal service of a document on a party to the agreement, service of the document on the party in accordance with the agreement is taken to be personal service on the party.

6464 Acceptance of service by solicitor

(1) A solicitor may accept service of a document for a person (the ***relevant person***).

(2) The solicitor must—

(a) make a note on a copy of the document to the effect that the solicitor accepts service for the relevant person; and

(b) give the copy to the person serving the document.

(3) The relevant person is taken to have been served with the document on the day the solicitor accepts service of the document, unless the relevant person proves the solicitor did not have authority to accept service for the relevant person.

(4) For any provision of these rules requiring personal service of a document, service of the document on the solicitor under this rule is taken to be personal service on the relevant person.

6465 Special requirements for service by fax

(1) A document served by fax must include a cover page stating the following:

(a) the sender's name and address;

(b) the name of the person to be served;

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(c) the date and time of transmission;

(d) the total number of pages, including the cover page, transmitted;

(e) the phone number from which the document is transmitted;

(f) the name and phone number of a person to contact if there is a problem with the transmission;

(g) that the transmission is for service under these rules.

(2) An affidavit of service of a document by fax must include, as an annexure, the transmission advice, generated by the sender's fax machine, indicating the transmission was successful.

6466 Email service—other matters

(1) This rule applies if a document (the ***emailed document***) is served by electronic communication under these rules.

(2) The emailed document must be capable of being printed by the recipient with the content and in the form in which it was created.

(3) The electronic communication for the emailed document must include the following:

(a) the name and phone number of a person to contact if there is a problem with the electronic communication;

(b) that the electronic communication is for service under these rules.

(4) If these rules require or allow the emailed document to be signed, it is sufficient compliance if the person who serves the emailed document—

(a) identifies himself or herself in the electronic communication by stating his or her name and business address; and

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(b) states in the electronic communication that the original of the emailed document was signed and by whom.

Note ***These rules*** is defined in the dictionary.

(5) If these rules require or allow service of a sealed or stamped copy of a document, it is sufficient compliance if—

(a) the emailed document is a copy of a document that was sealed or stamped; and

(b) the person who serves the emailed document states in the electronic communication that the original of the emailed document was sealed or stamped.

(6) If the emailed document is a copy of an affidavit, the original affidavit is taken to have been sworn if—

(a) the original affidavit was properly sworn; and

(b) the person who serves the copy of the affidavit states in the email that the original was properly sworn.

6467 Proof of service

(1) Service of a document may be proved—

(a) by affidavit of service made by the person who served the document; or

(b) by the person who served the document giving sworn evidence about the service; or

(c) if the document was served under rule 6412 (Service of originating process by post—Magistrates Court)—by production of the certificate of postal service; or

(d) in another way that the court directs is to be treated as appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction.

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(2) If an affidavit of service of a document is required or allowed under a territory law, the affidavit—

(a) for service in accordance with rule 6405 (How document is personally served)—must be made by the person who served the document and include the following:

(i) the person's full name;

(ii) the time, day and date the document was served;

(iii) the place of service;

(iv) the name of the person served and how the person was identified; or

(b) for any other kind of service—

(i) must state how the document was served; and

(ii) must state the relevant dates and the facts showing service; and

(iii) if service was made in a way that required the person served to be identified—how the person was identified; and

(iv) may be made on information given to, or the belief of, the person causing the service; and

(v) if made on information given to the person causing the service—must state the source of the information.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(3) For subrule (2) (b) (ii), if the document was served by post, the affidavit must state the following:

(a) that it was sent by prepaid post to a stated address;

(b) that it was addressed to the person or, if it was sent to an address for service that is the office of a solicitor, to that solicitor;

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(c) the date the document was posted.

(4) Subrules (2) and (3) do not limit the matters to be stated in the affidavit.

(5) If the court gives leave to serve a document—

(a) a sealed copy of the order giving leave must be served with the document; and

(b) any affidavit of service for the document must deal with the service of the order as well as the service of the document.

(6) An affidavit of service of a document must—

(a) have the document filed with it as an annexure or exhibit or be written on the document; or

(b) if the document has been filed in the court—mention the document in a way sufficient to enable the document to be identified.

6468 Identity of person served

For proving service, a statement by the person served of his or her identity or that the person holds a particular position is evidence of the identity or that the person holds the position.

6469 Change of address for service

(1) This rule applies if a person has given the court an address for service in a proceeding and the person's address for service changes in any way before the proceeding is finally disposed of.

(2) The person must—

(a) file in the court a notice stating the new address (the ***new address notice***); and

(b) serve a sealed or stamped copy of the new address notice on every other active party to the proceeding.

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Note See approved form 6.15 (Notice of change of address for service) AF2006-423.

Division 6.8.8 Service of subpoenas and notices instead of subpoenas—general

6480 Definitions—div 6.8.8

In this division:

ACT Ambulance Service means the ACT Ambulance Service established under the *Emergencies Act 2004*, section 40.

medical expert means a health practitioner registered under the *Health Practitioner Regulation National Law (ACT) Act 2010*.

special witness means—

(a) a medical expert; or

(b) a member of the ACT Ambulance Service.

6481 Subpoena—service on solicitor

If the addressee for a subpoena in a proceeding is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's agreement, be served on the addressee by leaving it at the addressee's address for service.

6482 Subpoena—service on special witness

(1) A subpoena is taken to be served personally on a special witness if, at a place where the witness's practice or work is carried on—

(a) it is given to a person apparently engaged (whether as employee or otherwise) in relation to the practice, or at the place of work, and apparently at least 16 years old; or

(b) if a person mentioned in paragraph (a) does not accept the subpoena—the subpoena is put down in the person's presence and the person is told in general terms what it is.

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(2) A subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding (the ***hearing date***) unless the subpoena is served in accordance with leave given under subrule (3) or (8).

(3) The court may give leave for a subpoena to be served on a special witness requiring the witness to attend to give evidence later than 6 weeks before the hearing date.

(4) An application for leave under subrule (3) is made by filing—

(a) the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 6 weeks before the hearing date; and

(b) an affidavit in support of the application.

(5) The affidavit in support of the application must state—

(a) the need for the special witness to give evidence in the proceeding; and

(b) the reason the subpoena was not issued in enough time to enable it to be served at least 6 weeks before the hearing date; and

(c) whether the witness has been told about the hearing and, if so, whether the witness is able to attend the hearing; and

(d) the earliest date when the subpoena can be served.

(6) Part 6.2 (Applications in proceedings) does not apply to an application for leave under subrule (3).

(7) If the court gives leave under subrule (3), it must set a date for the last date of service for the subpoena.

(8) If a special witness to whom a notice has been given in accordance with rule 6483 fails to attend the court on the date and at the time stated in the notice, the court may give leave for the service of a subpoena on the witness requiring the attendance of the witness.

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Note Pt 6.2 (Applications in proceedings) applies to an application for leave under r (8).

6483 Special witness—notice instead of subpoena

(1) In a proceeding, a notice stating the date and time set for the hearing for the proceeding and requesting a special witness's attendance may be given to the witness instead of a subpoena.

(2) The notice may be given in the same way as a subpoena may be served on a special witness.

(3) However, the notice must not be given later than 6 weeks before the date set for the hearing.

6484 Special witness—no shortening of time for service

The parties to a proceeding cannot, by agreement, shorten the time for service of a subpoena on, or the giving of a notice under rule 6483 to, a special witness.

Division 6.8.9 Service out of Australia

Note 1 This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

Note 2 Service outside Australia under the Hague Convention is dealt with in div 6.8.12 (Service under the Hague Convention).

Note 3 Service of initiating documents in New Zealand for certain civil proceedings is dealt with in the Trans-Tasman Proceedings Act, pt 2. See also these rules, pt 6.10A (Trans-Tasman proceedings).

6500 Meaning of *Australia*—div 6.8.9

In this division:

Australia includes the external territories.

6501 .

Note These rules do not include a r 6501.

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The rule number has been kept to ensure that provision numbers in these rules are consistent with the Harmonised Court Rules On Service Out Of Australia.

6502 Service of originating process without leave

An originating process may be served out of Australia on a person without the court's leave in the following circumstances:

(a) if the proceeding is based on a tortious act or omission—

(i) which was done or which happened wholly or partly in the ACT; or

(ii) in relation to which the damage was sustained wholly or partly in the ACT;

(b) if the proceeding is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in relation to a breach of, a contract which—

(i) was made or entered into in the ACT; or

(ii) was made by or through an agent trading or residing in the ACT; or

(iii) was to be wholly or in part performed in the ACT; or

(iv) was by its terms or by implication to be governed by a territory law or to be enforceable or cognisable in the court;

(c) if the proceeding is for a breach in the ACT of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach out of the ACT that rendered impossible the performance of that part of the contract that ought to have been performed in the ACT;

(d) if the proceeding—

(i) is for an injunction to compel or restrain the performance of any act in the ACT; or

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(ii) is for interim or ancillary relief in relation to any matter or thing in or connected with the ACT, where the relief is sought in relation to judicial or arbitral proceedings started or to be started, or an arbitration agreement made, in or outside the ACT (including without limitation interim or ancillary relief in relation to any proceedings under the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2017*); or

(iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under subdivision 2.9.4.2 (Freezing orders) in relation to any matter or thing in or connected with the ACT;

(e) if the subject matter of the proceeding is land or other property situated in the ACT, or any act, deed, will, instrument, or thing affecting the land or property, or the proceeding is for the perpetuation of testimony relating to the land or property;

(f) if the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged under territory law;

(g) if any relief is sought against any person domiciled or ordinarily or habitually resident in the ACT (whether present in the ACT or not);

(h) if any person out of the ACT is—

(i) a necessary or proper party to a proceeding properly brought against another person served or to be served, (whether in the ACT or outside the ACT) under any other provision of these rules); or

(ii) a defendant to a proceeding for contribution or indemnity in relation to a liability enforceable by a proceeding in the court;

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(i) if the proceeding is for—

(i) the administration of the estate of a person who died domiciled in the ACT; or

(ii) any relief or remedy that might be obtained in a proceeding for the administration of the estate of a person who died domiciled in the ACT;

(j) if the proceeding arises under a territory law and—

(i) any act or omission to which the proceeding relates was done or occurred in the ACT; or

(ii) any loss or damage to which the proceeding relates was sustained in the ACT; or

(iii) the territory law applies expressly or by implication to an act or omission that was done or occurred outside the ACT in the circumstances alleged; or

(iv) the territory law expressly or by implication confers jurisdiction on the court over people outside the ACT (in which case any requirements of the territory law relating to service must be complied with);

(k) if the person to be served has submitted to the jurisdiction of the court;

(l) if a proceeding is made for restitution or for the remedy of constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or happened wholly or partly in the ACT;

(m) if it is sought to recognise or enforce any judgment;

(n) if the proceeding is founded on a cause of action arising in the ACT;

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(o) if the proceeding affects the person to be served in relation to the person's membership of a corporation incorporated in the ACT, or of an association formed or carrying on any part of its affairs in the ACT;

(p) if the proceeding is about the construction, effect or enforcement of—

(i) an ACT law; or

(ii) a law of the Commonwealth (including an Imperial Act applying as a law of the Commonwealth) affecting property in the ACT;

(q) if the proceeding—

(i) relates to an arbitration held in the ACT or governed by territory law; or

(ii) is to enforce in the ACT an arbitral award wherever made; or

(iii) is for orders necessary or convenient for carrying into effect in the ACT the whole or any part of an arbitral award wherever made;

(r) if the proceeding is for relief relating to the custody, guardianship, protection or welfare of a child present in the ACT or who is domiciled or ordinarily or habitually resident in the ACT (whether present in the ACT or not);

(s) if the proceeding, as far as it relates to the person to be served, falls partly within 1 or more of paragraphs (a) to (r) and, as to the residue, within 1 or more of the other of paragraphs (a) to (r).

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Note 1 Originating process includes a document that starts a civil proceeding as well as a cross-claim or third-party claim.

Note 2 If a proceeding is started in the court and originating process is served out of Australia under this rule but the court later decides that it is more appropriate that the proceeding be determined by a court of another Australian jurisdiction, the court may transfer the proceeding to the other court under the *Jurisdiction of Courts (Cross-vesting) Act 1993* and may make an order for costs against the party who started the proceeding in the court rather than in the transferee court.

6503 Service of originating process with leave

(1) In any proceeding if service is not allowed under rule 6502, an originating process may be served out of Australia with the leave of the court.

(2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

(5) The court may give leave if satisfied that—

(a) the proceeding has a real and substantial connection with the ACT; and

(b) the ACT is an appropriate forum for the trial; and

(c) in all the circumstances the court should assume jurisdiction.

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6504 Court's discretion whether to assume jurisdiction

(1) On application by a person on whom an originating process has been served out of Australia, the court may dismiss or stay the proceeding or set aside service of the originating process.

(2) Without limiting subrule (1), the court may make an order under this rule if satisfied that—

(a) service of the originating process is not authorised by these rules; or

(b) the court is an inappropriate forum for the trial of the proceeding; or

(c) the proceeding has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending the proceeding.

6505 Notice to person served outside Australia

If a person is to be served out of Australia with an originating process, the person must also be served with a notice informing the person of—

(a) the scope of the jurisdiction of the court in relation to proceedings against people who are served outside Australia; and

(b) the grounds alleged by the plaintiff to establish jurisdiction; and

(c) the person's right to challenge service of the originating process or the jurisdiction of the court or to file a conditional notice of intention to respond.

Note See approved form 6.5 (Service outside the jurisdiction) AF2017-151.

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6506 Time for filing notice of intention to respond

Except when the court otherwise orders, a defendant who has been served out of Australia must file a notice of intention to respond within 42 days from the date of service.

6507 Leave to proceed if notice of intention to respond not filed

(1) If an originating process is served on a person outside Australia and the person does not file a notice of intention to respond, the party serving the document may not proceed against the person served except by leave of the court.

(2) An application for leave under subrule (1) may be made without serving notice of the application on the person served with the originating process.

6508 Service of other documents outside Australia

Any document other than an originating process may be served outside Australia with the leave of the court, which may be given with any directions that the court considers appropriate.

6509 Mode of service

A document to be served outside Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

Division 6.8.11 Service of foreign legal process in the ACT

Note to div 6.8.11

This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

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6540 Letter of request from foreign tribunal—procedure

(1) This rule applies if, in a civil or commercial matter before a court or tribunal of a foreign country (the ***foreign court***)—

(a) the foreign court, by letter of request, requests service on a person in the ACT of any process or citation (the ***process***) in the matter; and

(b) the Attorney-General files the request in the court and indicates that the process should be served.

(2) The following procedures apply:

(a) the letter of request must be accompanied by the following:

(i) if the letter is not in English—a translation of the letter in English;

(ii) 2 copies of the process to be served;

(iii) either—

(A) 2 copies of the process in English; or

(B) 2 copies of the process each having a notation on it in English stating as precisely as possible the name and address of the person on whom the document is to be served, the nature of the document, and the names of the parties;

(b) if paragraph (a) (iii) (B) is complied with, it is not necessary to give the person served a translated copy of the process;

(c) an enforcement officer must serve the process personally under these rules;

(d) after serving the process, the enforcement officer must return to the registrar 1 copy of the process, an affidavit of service of the process, and particulars of charges for the cost of service of the process;

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(e) the registrar must certify the charges, or another amount properly payable for service of the process;

(f) the registrar must send the following to the Attorney-General:

(i) the letter of request for service received from the foreign court;

(ii) the affidavit of service of the process, with a sealed certificate on it;

(iii) a certificate establishing the fact and the date of service or indicating why it has not been possible to serve the process;

(iv) a certificate stating the amount of the charges properly payable for the cost of serving the process.

6541 Orders for substituted service etc for div 6.8.11

With the Attorney-General's agreement, the court may, in relation to the service of process of a court or tribunal of a foreign country, make an order for substituted service or any other order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

6542 Noncompliance with div 6.8.11

The court may order that effect is to be given to a letter of request for the service of process of a court or tribunal of a foreign country, even though rule 6540 (Letter of request from foreign tribunal—procedure) has not been complied with.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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Division 6.8.12 Service under the Hague Convention

Note This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

Subdivision 6.8.12.1 Preliminary

6550 Definitions—div 6.8.12

In this division:

additional authority, for a convention country, means an authority that is—

(a) designated by the country, under the Hague Convention, article 18, to be an authority (other than the central authority) for the country; and

(b) competent to receive requests for service abroad emanating from Australia.

applicant, for a request for service abroad or a request for service in the ACT, means the person on whose behalf service is requested.

central authority, for a convention country, means an authority that is designated by the country, under the Hague Convention, article 2, to be the central authority for the country.

certificate of service means a certificate of service that is completed for the Hague Convention, article 6.

certifying authority, for a convention country, means the central authority for the country or another authority that is designated by the country, under the Hague Convention, article 6, to complete certificates of service in the form annexed to the Hague Convention.

civil proceeding means any judicial proceeding in relation to a civil or commercial matter.

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defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served.

foreign judicial document means a judicial document that originates in a convention country and relates to a civil proceeding in a court of the country.

forwarding authority means—

(a) for a request for service of a foreign judicial document in the ACT—the authority or judicial officer of the convention country in which the document originates that—

(i) sends the request; and

(ii) is competent under the law of the country to send the request under the Hague Convention, article 3; or

(b) for a request for service of a local judicial document in a convention country—the registrar.

Hague Convention means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965.

Hague Convention country means a country, other than Australia, that is a party to the Hague Convention.

initiating process means any document by which a proceeding, including a proceeding on a counterclaim or third-party notice, is started.

local judicial document means a judicial document that relates to a civil proceeding in the court.

registrar means the registrar of the Supreme Court.

request for service abroad means a request for service in a convention country of a local judicial document mentioned in rule 6553.

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request for service in the ACT means a request for service in the ACT of a foreign judicial document mentioned in rule 6562.

6551 Rules under this division prevail

If a rule under this division is inconsistent with another provision of these rules, the rule prevails to the extent of the inconsistency.

Subdivision 6.8.12.2 Service abroad of local judicial documents

6552 Application—subdiv 6.8.12.2

(1) This subdivision applies to service of a local judicial document in a Hague Convention country.

(2) However, this subdivision does not apply if the document is served, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in the Hague Convention, article 8.

6553 Application for request for service abroad

(1) A person may apply to the registrar, as a forwarding authority, for a request for service of a local judicial document in a Hague Convention country.

(2) The application must be accompanied by 3 copies of the following documents:

(a) a draft request for service abroad;

Note See approved form 6.21, part 1 (Request for service abroad of judicial documents) AF2009-149.

(b) the document to be served;

(c) a summary of the document to be served;

Note See approved form 6.22 (Summary of document to be served) AF2009-150.

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(d) if, under the Hague Convention, article 5, the central authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, 1 or more official languages of the country, a translation into the languages of the document to be served and the summary of the document to be served.

(3) The application must contain a written undertaking to the court, signed by the legal practitioner on the record for the applicant (or if there is no legal practitioner on the record, the applicant) in the proceeding to which the local judicial document relates—

(a) to be personally liable for all costs that are incurred—

(i) by employing a person to serve the documents to be served, who is qualified to do so under the law of the Hague Convention country in which the documents are to be served; or

(ii) by using any particular method of service that has been requested by the applicant for serving the documents to be served; and

(b) to pay the amount of the costs mentioned in paragraph (a) to the registrar within 28 days after the day the applicant receives a notice from the registrar stating the amount of the costs under rule 6555; and

(c) to give any security for the costs mentioned in paragraph (a) that the registrar may require.

(4) The draft request for service abroad—

(a) must be completed (except for signature) by the applicant; and

(b) must state whether, if the time fixed for entering an appearance in the proceeding to which the local judicial document relates expires before the document is served, the applicant wants service to be attempted after the expiry of the time; and

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(c) must be addressed to the central authority, or to an additional authority, for the Hague Convention country in which the documents are to be served; and

(d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the central authority.

(5) A translation required under subrule (2) (d) must bear a certificate (in English and the language used in the translation) signed by the translator stating—

(a) that the translation is an accurate translation of the documents to be served; and

(b) the translator's full name, address and qualifications for making the translation.

6554 How application to be dealt with

(1) The registrar must, if satisfied that an application and its accompanying documents comply with rule 6553—

(a) sign the request for service abroad; and

(b) send 2 copies of the relevant documents—

(i) if the applicant has asked for the request to be sent to a nominated additional authority for the Hague Convention country in which the documents are to be served—to the nominated additional authority; or

(ii) in any other case—to the central authority for the Hague Convention country in which the documents are to be served.

(2) The registrar must, if not satisfied that the application or any of the accompanying documents complies with rule 6553, tell the applicant how the application or document fails to comply.

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(3) In this section:

relevant documents means the following:

(a) the signed request for service abroad;

(b) the document to be served;

(c) the summary of the document to be served;

(d) if a translation is required under rule 6553 (2) (d), each translation of the documents mentioned in paragraphs (a) and (b).

6555 Procedure on receipt of certificate of service

(1) The registrar must, on receipt of a certificate of service in due form of a local judicial document to which a request for service abroad relates—

(a) arrange for the original certificate to be filed in the proceeding to which the document relates; and

(b) send a copy of the certificate to—

(i) if there is a legal practitioner on the record for the applicant in the proceeding—the legal practitioner; or

(ii) if there is not a legal practitioner on the record for the applicant in the proceeding—the applicant.

(2) For subrule (1), a certificate of service is in due form if—

(a) the certificate is in accordance with approved form 6.21, part 2; and

Note See approved form 6.21 (Request for service abroad of judicial documents and certificate) AF2009-149.

(b) the certificate has been completed by a certifying authority for the Hague Convention country in which service was requested; and

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(c) if the applicant requires that a certificate completed by an additional authority is countersigned by the central authority—the certificate is countersigned by the central authority.

(3) The registrar must, on receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), send a notice stating the amount of the costs to the legal practitioner, or applicant, who signed the undertaking mentioned in rule 6553.

(4) For subrule (3), a statement of costs is in due form if it—

(a) relates only to costs of a kind mentioned in rule 6553 (3) (a); and

(b) has been completed by the certifying authority for the Hague Convention country in which service was requested.

(5) Subrule (1) does not apply unless—

(a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 6553 (3) (c); or

(b) if the security given under rule 6553 (3) (c) is inadequate to cover the costs, an amount equal to the amount by which the costs exceed the security has been paid to the registrar.

6556 Payment of costs

(1) On receipt of a notice under rule 6555 (3), the legal practitioner or applicant must pay to the registrar the amount stated in the notice as the amount of the costs.

(2) If the legal practitioner or applicant fails to pay the amount of the costs within 28 days after the day the notice is received—

(a) except with the leave of the court, the applicant may not take a further step in the proceeding to which the local judicial document relates until the costs are paid; and

(b) the registrar may take appropriate steps to enforce the undertaking for payment of the costs.

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6557 Evidence of service

A certificate of service of a local judicial document in due form under rule 6555 (2) that certifies that the document was served on a stated date is, in the absence of any evidence to the contrary, sufficient proof that—

(a) the document was served by the method stated in the certificate on the date; and

(b) if the method of service was requested by the applicant, the method is compatible with the law in force in the Hague Convention country in which the document was served.

Subdivision 6.8.12.3 Default judgment following service abroad of initiating process

6558 Application—subdiv 6.8.12.3

This subdivision applies to a civil proceeding for which an initiating process has been sent following a request for service abroad to the central authority, or an additional authority, for a Hague Convention country.

6559 Restriction on power to enter default judgment if certificate of service filed

(1) This rule applies if—

(a) a certificate of service of initiating process in due form under rule 6555 (2) is filed in a proceeding stating that the initiating process has been served; and

(b) the defendant in the proceeding has not filed a notice of intention to respond or defence.

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(2) The court must not enter default judgment against the defendant unless satisfied that—

(a) the initiating process was served on the defendant—

(i) by a method of service prescribed by the internal law of the Hague Convention country in which the document was served for the service of documents in domestic proceedings on people within its territory; or

(ii) by a particular method of service—

(A) that the applicant requested; and

(B) under which the document was delivered to the defendant or the defendant's home; and

(C) that is compatible with the law in force in the Hague Convention country in which the document was served; or

(iii) if the applicant did not request a particular method of service—in circumstances in which the defendant accepted the document voluntarily; and

(b) the initiating process was served in sufficient time for the defendant to file a notice of intention to respond or defence in the proceeding.

(3) In this rule:

sufficient time means—

(a) 42 days after the date stated in the certificate of service of initiating process as the date on which the document was served; or

(b) if, in the circumstances, the court considers a shorter time is sufficient time for the defendant to file a notice of intention to respond—the shorter time.

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6560 Restriction on power to enter default judgment if certificate of service not filed

(1) This rule applies if—

(a) a certificate of service of initiating process in due form under rule 6555 (2) is either—

(i) not filed in a proceeding; or

(ii) filed in a proceeding, but states that the initiating process has not been served; and

(b) the defendant has not filed a notice of intention to respond or defence.

(2) The court must not enter default judgment against the defendant unless satisfied that—

(a) the initiating process was sent to the central authority, or additional authority, for the Hague Convention country in which service of the initiating process was requested; and

(b) a period has elapsed since the day the initiating process was sent that is—

(i) adequate in the circumstances; and

(ii) at least 6 months; and

(c) all reasonable steps have been taken—

(i) to serve the initiating process; or

(ii) to obtain a certificate of service of initiating process from the certifying authority for the Hague Convention country in which service was requested.

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6561 Setting aside default judgment

(1) This rule applies if the court has entered default judgment against the defendant in a proceeding to which this subdivision applies.

(2) On application by the defendant, the court may set aside the default judgment if satisfied that the defendant—

(a) without any fault on the defendant's part, did not know about the initiating process in sufficient time to file a notice of intention to respond or defence; and

(b) has a good defence to the proceeding on the merits.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(3) An application to set aside default judgment under this rule may be made—

(a) at any time within 1 year after the day the judgment was entered; or

(b) if the 1-year period has expired—within the time after the defendant learns of the judgment that the court considers reasonable in the circumstances.

(4) The powers of the court under this rule are additional to any other powers of the court.

Subdivision 6.8.12.4 Local service of foreign judicial documents

6562 Application—subdiv 6.8.12.4

(1) This subdivision applies to service in the ACT of a foreign judicial document for which a due form of request for service has been sent to the court—

(a) by the Attorney-General of the Commonwealth, whether in the first instance or following a referral under rule 6563; or

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(b) by a forwarding authority.

(2) A request for service in the ACT is in due form if it is in accordance with approved form 6.21, part 1 and accompanied by the following:

Note See approved form 6.21 (Request for service abroad of judicial documents and certificate) AF2009-149.

(a) the document to be served;

(b) a summary of the document to be served;

Note See approved form 6.22 (Summary of document to be served) AF2009-150.

(c) a copy of the request and each document mentioned in paragraphs (a) and (b);

(d) if a document mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) A translation required under subrule (2) (d) must bear a certificate in English signed by the translator stating—

(a) that the translation is an accurate translation of the document; and

(b) the translator's full name, address and qualifications for making the translation.

6563 Certain documents to be referred back to Attorney-General of the Commonwealth

(1) This rule applies if the registrar reasonably believes that—

(a) a request for service in the ACT does not comply with rule 6562; or

(b) the document to which the request relates is not a foreign judicial document; or

(c) compliance with the request may infringe Australia's sovereignty or security.

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(2) The registrar must refer the request for service in the ACT to the Attorney-General of the Commonwealth together with a statement of the registrar's belief.

Note The Attorney-General of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

6564 Service of foreign judicial documents etc

(1) Subject to rule 6563, on receipt of a request for service in the ACT, the court must arrange for service of the relevant documents in accordance with the request.

(2) The relevant documents may be served by any of the following methods:

(a) if a method of service is prescribed by the law in force in the ACT for the service of a document of a kind corresponding to the document to be served—the prescribed method of service;

(b) if a method of service is not prescribed by the law in force in the ACT for the service of a document of a kind corresponding to the document to be served—the method of service of initiating process in a proceeding in the court;

(c) if the applicant has requested a particular method of service, and the method of service is compatible with the law in force in the ACT—the particular method of service requested;

(d) if the applicant has not requested a particular method of service and the person requested to be served accepts the relevant documents voluntarily—delivery of the relevant documents to the person requested to be served.

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(3) In this rule:

relevant documents means the following documents:

(a) the document to be served;

(b) a summary of the document to be served;

(c) a copy of the request for service in the ACT;

(d) if a document mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

6565 Affidavit about service

(1) A person who serves a document in accordance with a request for service in the ACT must file with the court an affidavit stating—

(a) the time, day of the week and date on which the document was served; and

(b) the place where the document was served; and

(c) the method of service; and

(d) the person on whom the document was served; and

(e) the way in which the person served was identified.

(2) If attempts to serve a document in accordance with a request for service in the ACT have failed, the person who attempted the service must file with the court an affidavit stating—

(a) details of the attempts made to serve the document; and

(b) the reasons why service was prevented.

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(3) On the filing of an affidavit about service under this rule, the registrar must—

(a) complete a certificate of service, sealed by the court, on the reverse side of, or attached to, the request for service in the ACT; and

Note See approved form 6.21, pt 2 (Certificate of service) AF2009-149.

(b) send the certificate of service, together with a statement of the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

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Part 6.9 Subpoenas

6600 Definitions—pt 6.9

(1) In this part:

issuing officer means the registrar.

issuing party, for a subpoena, means the party at whose request the subpoena is issued.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is a ***subpoena to attend to give evidence***.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is a ***subpoena to produce***.

6601 Issuing subpoena

(1) In any proceeding, the court may by subpoena order the addressee to do either or both of the following:

(a) to attend to give evidence as directed by the subpoena;

(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena.

(2) An issuing officer must not issue a subpoena—

(a) without the court's leave if it appears to the issuing officer that the subpoena—

(i) is not substantially complete; or

(ii) does not substantially comply in form with these rules; or

Note The registrar may refuse to accept a subpoena for filing under r 6142 (Rejecting documents—abuse of process etc).

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(b) if the court has made an order, or there is a provision of these rules, having the effect of requiring that the proposed subpoena—

(i) not be issued; or

(ii) not be issued without the court's leave and the leave has not been given; or

(c) requiring the production of a document or thing in the custody of the court or another court.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave for this subrule.

(3) The issuing officer must seal, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to be issued on its being sealed or otherwise authenticated under subrule (3).

6601A Issuing subpoena to produce—originating claim

(1) This rule applies to a proceeding started by—

(a) originating claim; or

(b) originating application, if the court has ordered that the proceeding continue as if started by originating claim; or

(c) an application for arbitration under part 3.13 (Workers compensation).

(2) An issuing officer must not issue a subpoena to produce in the proceeding without the court's leave unless the court has set a date for hearing.

(3) Subrule (2) does not apply to a subpoena in a proceeding under part 3.13 that is addressed to a party to the proceeding.

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6601B Issuing subpoena to produce—originating application

(1) This rule applies to a proceeding—

(a) started by originating application; or

(b) started by originating claim, if the court has ordered that the proceeding continue as if started by originating application.

(2) An issuing officer may issue a subpoena to produce in the proceeding at any time unless the court otherwise orders.

6602 Form of subpoena

(1) A subpoena must not be addressed to more than 1 person.

Note See the following approved forms:

(a) approved form 6.10 (Subpoena to give evidence) AF2017-150;

(b) approved form 6.10A (Subpoena to produce documents) AF2017-152;

(c) approved form 6.10B (Subpoena to give evidence and produce documents) AF2017-153.

(2) A subpoena must identify the addressee by name or by description of position.

Note The Legislation Act, dict, pt 1 defines ***position*** to include office.

(3) A subpoena to attend to give evidence must state the date, time and place for attendance.

(4) A subpoena to produce must—

(a) identify the document or thing to be produced; and

(b) state the date, time and place for production.

(5) The date stated in a subpoena must be the date of trial or any other date allowed by the court.

(6) The place stated for production may be the court or the address of anyone authorised to take evidence in the proceeding.

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(7) A subpoena must state the last date for service of the subpoena.

(8) The last date for service must be—

(a) 5 days before the date stated in the subpoena for compliance with it; or

(b) if the court sets a different date under rule 6603 (Subpoena to produce—leave to serve late)—the date set.

(9) Subrule (8) is subject to rule 6482 (Subpoena—service on special witness).

Note Rule 6482 (2) provides that a subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.

(10) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

6603 Subpoena—leave to serve late

(1) The court may give leave for a subpoena to be served later than 5 days before the date stated in the subpoena for compliance with it (the ***compliance date***).

(2) An application for leave is made by filing—

(a) a draft of the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 5 days before the compliance date; and

(b) an affidavit in support of the application.

(3) The affidavit in support of the application must state—

(a) for a subpoena to attend to give evidence—

(i) the need for the addressee for the subpoena to give evidence in the proceeding; and

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(ii) the reason the subpoena was not issued in enough time to enable it to be served at least 5 days before the compliance date; and

(iii) whether the addressee for the subpoena has been told about the hearing and, if so, whether the addressee is able to attend the hearing; and

(iv) the earliest date when the subpoena can be served; and

(b) for a subpoena to produce—

(i) the need for production of the document or thing required to be produced by the subpoena; and

(ii) the reason the subpoena was not issued in enough time to enable it to be served at least 5 days before the compliance date; and

(iii) whether the addressee for the subpoena has been told about the subpoena and, if so, whether the addressee is able to produce the document or thing before the compliance date; and

(iv) the earliest date when the subpoena can be served.

(4) If the court gives leave, it must set a date for the last date of service for the subpoena.

(5) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(6) The draft subpoena and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(7) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

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(8) This rule is subject to rule 6482 (Subpoena—service on special witness).

Note 1 Rule 6482 (2) provides that a subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.

Note 2 The *Service and Execution of Process Act 1992* (Cwlth), s 30 deals with applications for a shorter period to serve subpoenas under that Act.

6603A Subpoena—change of date for attendance of production

(1) The issuing party may give the addressee notice of a date or time later than the date or time stated in a subpoena as the date or time for attendance or production or both.

(2) If notice is given under subrule (1), the subpoena applies as if the date or time for attendance or production under the subpoena were the date or time stated in the notice.

6604 Setting aside subpoena or other relief

(1) On the application of a party or someone else having a sufficient interest, the court may set aside a subpoena completely or partly, or grant other relief in relation to it.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) A copy of the application must be served on the issuing party.

(3) The court may order that the applicant give notice of the application to any other party or anyone else who has a sufficient interest.

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6605 Service of subpoena

(1) A subpoena must be served personally on the addressee.

(2) Subrule (1) is subject to rule 6481 (Subpoena—service on solicitor) and rule 6482 (Subpoena—service on special witness).

Note See also div 6.10A.3 (Trans-Tasman proceedings—service of subpoenas in New Zealand).

(3) The issuing party must serve a copy of a subpoena to produce on each other active party as soon as practicable after the subpoena has been served on the addressee.

6606 Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena unless conduct money has been handed or tendered to the addressee a reasonable time before the date when attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date stated in the subpoena as the last date for service of the subpoena.

(3) Despite rule 6605 (1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee (or, if the court orders service in another way, it has not been served in that way) if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and its requirements.

(4) The addressee must comply with a subpoena to produce—

(a) by attending at the date, time and place stated for production or, if the addressee has received a notice under rule 6603A, at the later date or time, and producing the subpoena or a copy of it and the document or thing to the court or the person authorised to take evidence in the proceeding; or

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(b) by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address stated for the purpose in the subpoena, so that they are received not later than 2 days before the date stated in the subpoena for attendance and production or, if the addressee has received notice under rule 6603A, before the later date.

(5) For a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and the document or thing in any of the ways allowed by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

(6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.

(7) A copy of the document may be—

(a) a photocopy; or

(b) in PDF format on a CD-ROM; or

(c) in any other electronic form that the issuing party has indicated will be acceptable.

6607 Production of subpoenaed document etc otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing under rule 6606 (4) (b).

(2) The registrar must, if asked by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than 1 document or thing, the addressee must, if asked by the registrar, provide a list of the documents or things produced.

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(4) The addressee may, with the issuing party's agreement, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may, in the subpoena or at the time of production, tell the registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

6608 Removal, return, inspection etc of subpoenaed documents and things

The court may give directions, on application or its own initiative, in relation to the removal from and return to the court, and the inspection, copying and disposal, of any document or thing that has been produced to the court in response to a subpoena.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions under this rule.

6609 Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing under rule 6606 (4) (b).

(2) On the request of a party, the registrar must tell the party whether production in response to a subpoena has happened and, if so, include a description, in general terms, of the documents and things produced.

(3) The request mentioned in subrule (2) must be made orally on the return date for the subpoena or in writing after the return date.

(4) A person may inspect a document or thing produced in response to a subpoena only—

(a) in accordance with the usual order or otherwise in accordance with this rule; or

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(b) if the court has given leave and the inspection is in accordance with the leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(5) Unless the court otherwise orders, the registrar may allow the parties to inspect at the registry any document or thing produced unless the addressee, a party or someone else having sufficient interest objects to the inspection under this rule.

(6) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must tell the court about the objection and the grounds of the objection.

(7) The objection mentioned in subrule (6) must be made orally to the court on the return date for the subpoena or in writing to the court before or after the return date.

(8) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may tell the court on the return date for the subpoena or in writing about the objection and the grounds of the objection.

(9) If the court receives an objection under this rule, the registrar—

(a) must not allow any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the court for hearing and decision.

Note The registrar may hear and decide the objection in some circumstances (see r 6253 (Registrar's powers—subpoenas)).

(10) The registrar must tell the issuing party in writing about—

(a) the objection; and

(b) the date, time and place the objection will be heard.

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(11) The issuing party must, a reasonable time before the date the objection will be heard, tell the addressee, the objector and each other active party in writing about—

(a) the objection; and

(b) the date, time and place the objection will be heard.

(12) In this rule:

usual order, in relation to a document or thing, means an order that the party given 1st access to inspect the document or thing has exclusive access to the document or thing for 5 days after the day the order is made, then any other party to the proceeding has access to inspect the document or thing.

Note See r 6767 (Power to allow removal of exhibits etc) for the procedure for the removal of documents and things from the registry.

6610 Disposal of subpoenaed documents and things produced

(1) Unless the court otherwise orders, the registrar may return to the addressee any document or thing produced in the proceeding in response to the subpoena.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering under this rule.

(2) The registrar must not return any document or thing under subrule (1) within 28 days after the end of the proceeding unless the registrar has given the issuing party at least 14 days notice of the registrar's intention to do so and that period has ended.

(3) If the registrar decides to return a document or thing under subrule (1), the registrar must give the addressee notice stating that—

(a) the document or thing may be collected from the registry; and

(b) the addressee may tell the registrar in writing that the addressee does not want the document or thing returned; and

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(c) if the document or thing is not collected from the registry within 28 days after the notice is given to the addressee, the registrar may dispose of the document or thing.

(4) If a document or thing is not collected by the addressee under subrule (3), the registrar may dispose of the document or thing in the way the registrar considers appropriate.

(5) The issuing party must attach to the front of a subpoena to produce to be served on the addressee a notice and declaration.

Note See approved form 6.10A (Subpoena to produce documents) AF2017-152.

(6) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the court in response to the subpoena.

(7) Subject to subrule (8), the registrar may, at the end of 4 months after the end of the proceeding, destroy all the documents produced in response to the subpoena that were declared by the addressee to be copies.

(8) The registrar may destroy the documents declared by the addressee to be copies that have become exhibits in the proceeding when they are no longer required in relation to the proceeding, including on any appeal.

6611 Costs and expenses of compliance with subpoena

(1) This rule applies if the addressee for a subpoena in a proceeding is not a party to the proceeding.

(2) The court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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(3) If an order is made under subrule (2), the court must fix the amount or direct that it be fixed according to the court's usual procedure in relation to costs.

(4) An amount fixed under this rule is separate from and additional to—

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee; and

(c) any amount that the addressee is entitled to under rule 1722 (Costs—solicitors' costs generally).

6612 Failure to comply with subpoena—contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 6605 (1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been personally served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) This rule does not affect any power of the court to enforce compliance with a subpoena, including power to issue a warrant for the arrest of an addressee who does not comply with a subpoena.

Note 1 Failure to comply with a subpoena may also be a criminal offence (see Criminal Code, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

Note 2 See also r 2444 (Enforcement—failure of individual to comply with subpoena etc) and r 2445 (Enforcement—failure of corporation to comply with subpoena etc).

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6613 Documents and things in custody of court

(1) A party who seeks production of a document or thing in the custody of the court or another court may tell the registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the court, the registrar must produce the document or thing—

(a) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or

(b) as the court directs.

Note Pt 6.2 (Applications in proceedings) applies to an application for a direction or order under this rule.

(3) If the document or thing is in the custody of another court, the registrar must, unless the court has otherwise ordered—

(a) ask the other court to send the document or thing to the registrar; and

(b) after receiving it, produce the document or thing—

(i) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or

(ii) as the court directs.

(4) Subrules (2) and (3) do not apply if rule 6142 (Rejecting documents—abuse of process etc) applies.

6614 Application of pt 6.9—subpoena under Commercial Arbitration Act

(1) This part applies, with necessary changes, in relation to a subpoena issued under the Commercial Arbitration Act for an arbitration as if—

(a) a reference to a subpoena were a reference to a subpoena issued under the Commercial Arbitration Act; and

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(b) a reference to a proceeding were a reference to the arbitration; and

(c) a reference to the registrar in rule 6606 (4) (b), rule 6607, rule 6609 and rule 6610 were a reference to the arbitral tribunal for the arbitration; and

(d) a reference to the court in rule 6608, rule 6609, rule 6610 and rule 6611 were a reference to the arbitral tribunal for the arbitration.

(2) In this rule:

arbitral tribunal, for a subpoena, means the arbitral tribunal for the arbitration in relation to which the subpoena was issued.

Commercial Arbitration Act means the *Commercial Arbitration Act 2017*.

Note The court has wide powers to issue subpoenas under the Commercial Arbitration Act (see s 27A).

6615 Subpoena issued by ACAT—leave to serve outside ACT

(1) This rule applies to an application for leave made under the *Service and Execution of Process Act 1992* (Cwlth), section 57 to serve a subpoena issued by the ACAT outside the ACT.

(2) An application for leave is made by filing—

(a) an affidavit in support of the application; and

Note See approved form 6.23 (Affidavit in support of application for leave to serve ACAT subpoena outside ACT) AF2009-287.

(b) a copy of the subpoena, annexed to the affidavit; and

(c) a draft order.

Note See approved form 6.24 (Order to serve ACAT subpoena outside ACT) AF2009-288.

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(3) The affidavit in support of the application must state—

(a) for a subpoena to attend to give evidence—

(i) the evidence the addressee is expected to give in the proceeding; and

(ii) why the addressee's evidence is necessary; and

(iii) whether the addressee for the subpoena has been told about the hearing and, if so, whether the addressee is able to attend the hearing; and

(iv) the hearing date for the proceeding and the date the subpoena must be served before; and

(b) for a subpoena to produce—

(i) why the document or thing required to be produced by the subpoena are necessary; and

(ii) whether the addressee for the subpoena has been told about the subpoena and, if so, whether the addressee is able to produce the document or thing before the compliance date; and

(iii) the hearing date for the proceeding and the date the subpoena must be served before.

(4) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.

(5) The affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

(6) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

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Part 6.10 Evidence

Note to pt 6.10

Pt 2.12 contains provisions about expert evidence in civil proceedings.

Division 6.10.1 General—pt 6.10

6700 Way evidence given—civil proceedings

(1) Evidence at the trial of a proceeding started by originating claim must be given orally in open court.

Note A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39 (Proceeding incorrectly started by originating application)).

(2) Evidence in a proceeding started by originating application must be given by affidavit.

Note 1 A proceeding incorrectly started by originating claim is taken to be a proceeding started by originating application if the court orders that the proceeding continue as if started by originating application (see r 38 (Proceeding incorrectly started by originating claim)).

Note 2 See also r 36 (When originating application taken to be used).

(3) This rule applies—

(a) unless the court otherwise orders; or

(b) subject to the Evidence Act, these rules or any other territory law.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 2 The following provisions set out other ways in which evidence may be given in particular circumstances or proceedings:

- div 2.8.4 (Interrogatories)
- div 2.12.3 (Expert reports)
- r 1547 (Assessment of damages—use of affidavit evidence)

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- r 6701 (Evidence on affidavit by agreement—civil proceedings)
- r 6702 (Evidence in another civil proceeding etc)
- r 6703 (Evidence by telephone etc)
- div 6.10.6 (Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link)
- div 6.10.8 (Taking evidence otherwise than at trial).

Note 3 See the Trans-Tasman Proceedings Act, pt 6 (Remote appearances) for other ways in which evidence from New Zealand may be given in civil proceedings.

6701 Evidence on affidavit by agreement—civil proceedings

(1) Unless the court otherwise orders, the parties to a proceeding started by originating claim may agree that evidence at the trial of the proceeding be given by affidavit.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 2 A proceeding incorrectly started by originating application is taken to be a proceeding started by originating claim if the court orders that the proceeding continue as if started by originating claim (see r 39 (Proceeding incorrectly started by originating application)).

(2) The agreement must be made before the proceeding is set down for trial.

(3) The parties must tell the court about the agreement before the proceeding is set down for trial.

6702 Evidence in another civil proceeding etc

(1) A party to a civil proceeding may rely on evidence given or an affidavit filed in another proceeding or in an earlier stage of the same proceeding.

(2) The party must give all other active parties to the proceeding 2 days notice of the party's intention to rely on the evidence.

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(3) However, if the notice is not given to any other active party, the party may only rely on the evidence or the affidavit with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

6703 Evidence by telephone etc

(1) The court may receive evidence or submissions by telephone, video link or another form of communication in a proceeding.

(2) The court may, by order, impose conditions for subrule (1).

Note 1 The following provisions also apply to receipt of evidence or submissions by the court by audiovisual or audio link:

- from within the ACT—the *Evidence (Miscellaneous Provisions) Act 1991*, pt 3.4
- from elsewhere in Australia—the *Evidence (Miscellaneous Provisions) Act 1991*, pt 3.2 and these rules, div 6.10.6 (Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link)
- from New Zealand—the Trans-Tasman Proceedings Act, pt 6 (Remote appearances) and these rules, div 6.10A.4 (Trans-Tasman proceedings—remote appearances).

Note 2 The provisions of the *Evidence (Miscellaneous Provisions) Act 1991* mentioned in note 1 do not exclude or limit the operation of any territory law (including these rules) that makes provision for the taking of evidence or the making of a submission outside the ACT for a proceeding in the ACT (see that Act, s 18).

Note 3 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

6704 Plans, photographs, video or audio recordings and models

(1) This rule applies if a party intends to tender a plan, photograph, video or audio recording, or model at a trial.

(2) Unless the court otherwise orders, at least 7 days before the day the trial starts, the party must give all other parties an opportunity to—

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(a) inspect anything mentioned in subrule (1) the party intends to tender; and

(b) agree to its admission without proof.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(3) An application for an order under subrule (2) need not be served on another party and the court may direct that the application and any supporting evidence be placed in a sealed container, for example, an envelope.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) The container may be opened only if the court orders it to be opened.

(5) Noncompliance with subrule (2) does not affect the admissibility of a plan, photograph, video or audio recording, or model.

(6) Compliance or noncompliance with subrule (2) may be taken into account on the question of costs.

(7) In this rule:

model includes a model or image generated by a computer.

Division 6.10.2 Affidavits

6710 Affidavit—form

(1) An affidavit must be—

(a) made in the first person; and

(b) divided into paragraphs numbered consecutively; and

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(c) limited, as far as possible, to 1 subject matter in each paragraph; and

(d) together with any annexure to the affidavit, numbered on each page consecutively, starting at '1' for the 1st page.

Note 1 See approved form 6.11 (Affidavit–general) AF2007-72.

Note 2 See also div 6.3.1 (General provisions about documents for filing), esp r 6103 (Documents—layout etc).

(2) If the person making an affidavit is, or is employed by, a party to the proceeding in which the affidavit is to be used, the affidavit must state that fact.

6711 Affidavit—contents

(1) An affidavit must be confined to facts within the knowledge of the person making the affidavit.

(2) However, an affidavit to be used in an application in a proceeding may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

Note 1 ***Application*** in a proceeding is defined in r 6006.

Note 2 The hearsay rule does not apply to evidence in an application in a proceeding if the party adducing the evidence also adduces evidence of its source (see Evidence Act, s 75 (Exception—interlocutory proceedings)).

(3) This rule does not apply to an affidavit made under division 2.11.3 (Default by defendant).

Note An affidavit in support of an application for default judgment must comply with r 1119 (Default judgments—relevant affidavits).

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6712 Affidavit—annexures and exhibits

(1) A document to be used with an affidavit must, if convenient, be annexed to the affidavit.

(2) However, an annexure to an affidavit must not be longer than 50 pages and, if there is more than 1 annexure to an affidavit, the annexures must not total more than 50 pages.

(3) Each annexure must be identified sequentially on its 1st page by a letter, starting at 'A' for the 1st annexure.

(4) Each annexure must include on its 1st page a statement—

(a) identifying the annexure as the annexure mentioned in the affidavit of the person making the affidavit, and

(b) signed by the person before whom the affidavit is taken.

Note See approved form 6.12 (Annexure to affidavit) AF2007-73.

(5) A group of different documents may form a single annexure.

(6) If it is not practicable to annex a document to be used with an affidavit, a copy of the document may be annexed to the affidavit.

(7) If it is not convenient to annex a document (or a copy of the document) to an affidavit, the document may be made an exhibit to the affidavit.

(8) Each exhibit to the affidavit must be identified by a separate certificate.

Note See approved form 6.13 (Certificate identifying exhibit) AF2006-421.

(9) The certificate is the title page for the exhibit, and must be securely attached to the front of it.

(10) The certificate—

(a) must be signed by the person before whom the affidavit is taken; and

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(b) must include the initials of the person making the affidavit, followed by an identifying number corresponding to the number of the exhibit.

Examples for r (10) (b)

1 for the 1st exhibit, the identifying number is 1

2 for the 4th exhibit, the identifying number is 4

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(11) An exhibit to an affidavit must be filed at the same time as the affidavit.

(12) If an exhibit to an affidavit contains a document, or group of documents, the document or documents must be—

(a) presented in a way that will facilitate the court's efficient and quick reference to them; and

(b) numbered on each page.

(13) Subrule (14) applies if there is more than 1 documentary exhibit to an affidavit.

(14) As far as practicable—

(a) the documents must be bound in 1 or more books, with the pages numbered; and

(b) a certificate must be bound—

(i) if there is 1 book—at the front of the book; or

(ii) if there is more than 1 book—at the front of each book dealing with the exhibits in the book; and

(c) an index to each book must be bound immediately after the certificate.

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(15) If a document or thing has been filed in a proceeding, whether or not as an annexure or exhibit to an affidavit, in a subsequent affidavit filed in the proceeding—

(a) the document or thing must not be made an annexure or exhibit to the affidavit; and

(b) the document or thing may be referred to in the affidavit in a way sufficient to enable the document or thing to be identified.

6713 Affidavit—document included in

(1) A person making an affidavit may include the relevant part of a document in the affidavit instead of making the document an annexure or exhibit to the affidavit.

(2) The party filing the affidavit must produce the document whenever the affidavit is used.

6714 Affidavit—when may be taken

An affidavit to be used in a proceeding may be taken before or after the proceeding starts.

6715 Affidavit—taking of

(1) The person (or each person) making an affidavit and the person taking the affidavit must sign or initial each page of the affidavit.

(2) For each person making the affidavit, a statement (a ***jurat***) must be placed at the end of the body of the affidavit and must—

(a) state whether the affidavit was sworn or affirmed; and

(b) state the place the person made the affidavit; and

(c) be signed by the person making the affidavit in the presence of the person taking the affidavit; and

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(d) then be signed by the person taking the affidavit, above a statement of the person's full name, address and capacity to take the affidavit.

Example of capacity for r (2) (d)

solicitor

Note 1 An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 See the *Evidence Act 1995 (Cwlth)*, s 186 (Swearing of affidavits before justices of the peace, notaries public and lawyers) and the *Oaths and Affirmations Act 1984*, s 11 (Authority to administer oath etc).

(3) However, a single jurat may be used for 2 or more people making the affidavit if—

(a) they all swear or affirm the affidavit at the same time before the same person; and

(b) the jurat includes their names in addition to the details required for each of them under subrule (2).

6716 Affidavit—certificate of reading or signature for person making

(1) If the person taking an affidavit considers that the person making it is incapable of reading the affidavit, the person taking the affidavit must certify in or below the jurat that—

(a) the affidavit was read or otherwise communicated in the person's presence to the person making it; and

(b) the person making it seemed to understand the affidavit; and

(c) either—

(i) the person making the affidavit made his or her mark or signature in the presence of the person taking the affidavit; or

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(ii) if the person taking the affidavit considers that the person making it is not capable of marking or signing the affidavit—the person making it signified in another way that the person made the affidavit.

(2) If the person taking an affidavit considers that the person making it cannot understand the affidavit when the affidavit is read or otherwise communicated to the person in English, the person taking the affidavit must certify in or below the jurat that an interpreter, whose name and address is stated in the certificate, swore before the person taking the affidavit that—

(a) the interpreter had, in the presence of the person taking the affidavit, interpreted the contents of the affidavit to the person making the affidavit; and

(b) the person making the affidavit seemed to understand it; and

(c) the interpreter had interpreted the oath to the person; and

(d) the person swore that the contents of the affidavit interpreted to the person were true.

(3) If the person taking an affidavit considers that the person making it is physically incapable of signing the affidavit, but is capable of reading it, the person taking the affidavit must certify in or below the jurat that the person signified that the person made the affidavit.

(4) If an affidavit is made by a person who is incapable of reading the affidavit, and a certificate under subrule (1) or (2) does not appear on the affidavit, the affidavit may be used in a proceeding only if the court is satisfied that—

(a) the affidavit was read or otherwise communicated to the person making it; and

(b) the person seemed to understand it; and

(c) the person signified that the person made the affidavit.

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(5) If an affidavit is made by a person who is physically incapable of signing the affidavit, but is capable of reading it, and a certificate under subrule (3) does not appear on the affidavit, the affidavit may be used in a proceeding only if the court is satisfied that the person signified that the person made the affidavit.

(6) In this rule:

jurat—see rule 6715 (2) (Affidavit—taking of).

6717 Affidavit—alterations in

(1) This rule applies to an affidavit if—

(a) the body or jurat of the affidavit has been altered; or

(b) the affidavit verifies an account or other document that has been altered.

(2) Unless the court otherwise orders, the affidavit may be filed and served.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering or leave under this rule.

(3) However, the affidavit may only be used in a proceeding—

(a) with the court's leave; or

(b) if the alteration was made in accordance with rule 6107 (Documents—alterations); or

(c) if the affidavit is taken before the registrar or another officer of the court and the registrar or other officer signs, initials or seals the alteration.

(4) This rule applies to an account or document verified by affidavit as if the account or document were part of the affidavit.

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(5) In this rule:

alter includes alter by omission, substitution or addition.

jurat—see rule 6715 (2) (Affidavit—taking of).

6718 Affidavit—filing and service

(1) An affidavit to be used in a proceeding must be filed.

(2) A copy of an affidavit intended to be used by a party in a proceeding must be served on each other active party—

(a) if these rules or the court sets a time for service—not later than that time; or

(b) if these rules or the court does not set a time for service—within a reasonable time before the hearing of the proceeding.

(3) If an affidavit—

(a) has not been filed; or

(b) has not been served in accordance with this rule;

the affidavit may only be used in a proceeding with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

(4) Subrule (2) and subrule (3) (b) do not apply to an application made without being served on another party.

6719 Affidavit—irregular in form

(1) An affidavit that is irregular in form (including an affidavit that does not comply with any approved form for the affidavit)—

(a) may be filed and served; and

(b) may be used in a proceeding only with the court's leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

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(2) If the court gives leave, the court must note on the affidavit that it was used by leave.

(3) An affidavit used under subrule (2) is afterwards taken to be a regular affidavit.

6720 Affidavit—scandalous matter etc

(1) If an affidavit contains irrelevant, offensive, oppressive, scandalous, or vexatious matter, the court may order that—

(a) the matter be struck out; or

(b) the affidavit be removed from the file; or

(c) the affidavit be removed from the file and destroyed.

(2) The court may make an order under this rule on the application of an interested party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

6721 Affidavit—cross-examination of maker

(1) If an affidavit is to be relied on at a hearing, the court may, by order—

(a) direct the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose; or

(b) dispense with the attendance for cross-examination of the person making it, and direct that the affidavit be used without the person making it being cross-examined in relation to it.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or leave under this rule.

(2) If an affidavit to be relied on at a hearing is served on a party more than 1 day before the day set for the hearing, and the party wishes the person who made the affidavit to attend the court for cross-examination, the party may, by notice served on the party filing

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or proposing to use an affidavit in the proceeding, require the attendance for cross-examination of the person who made the affidavit.

(3) The notice must be served—

(a) if the court, by order, sets a time for service—within that time; or

(b) if the court does not set a time for service—not later than a reasonable time before the attendance is required.

(4) If an affidavit to be relied on at a hearing is served on a party less than 2 days before the day set for the hearing, the person who made the affidavit must attend the court to be available for cross-examination unless the party otherwise agrees or the court dispenses with the attendance of the person under subrule (1).

(5) If the person who made the affidavit does not attend for cross-examination as required by a notice under subrule (2), the affidavit must not be used without the court's leave unless the court has dispensed with the attendance of the person under subrule (1).

(6) If the person who made the affidavit is cross-examined, the party using the affidavit may re-examine the person.

(7) Unless the court otherwise orders, a party who serves a notice under subrule (2) for the person who made an affidavit to attend the court is not liable to pay the expenses of the attendance.

6722 Affidavit—taken before party

The court may not receive, and a party may not file, an affidavit taken before a party personally.

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Division 6.10.3A Notice to produce

6748 Notice to produce

(1) A party to a proceeding may serve a notice on another party to the proceeding requiring the other party to produce to the court at the hearing of the proceeding a document or thing mentioned in the notice for the purpose of evidence in the proceeding.

Note See approved form 6.20 (Notice to produce) AF2008-121.

(2) The notice must be served on the other party not later than 14 days before the date set for the hearing of the proceeding unless the court otherwise orders.

(3) The other party must produce the document or thing mentioned in the notice to the court at the hearing if—

(a) the notice is served on the party in accordance with subrule (2); and

(b) the document or thing is in the party's possession.

(4) If the party required to produce the document or thing does not produce the document or thing to the court in accordance with the notice, the party requesting the production may—

(a) give secondary evidence of the contents or nature of the document or thing; or

(b) apply to the court for an order—

(i) that the other party produce the document or thing; or

(ii) adjourning the hearing.

(5) The court may order the other party to pay any costs caused by the party's failure to comply with the notice.

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(6) The court may order the party requesting the production of the document or thing to pay any costs caused by the other party's compliance with the notice, if the court considers the production of the document or thing to be unnecessary.

Division 6.10.4 Notices under Evidence Act

6750 Evidence of previous representation notice

(1) A notice of intention to adduce evidence of a previous representation under the Evidence Act, section 67 (1) must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 67.

(2) The notice may be accompanied by an affidavit setting out the evidence of the previous representation.

Note 1 The Evidence Act, s 67 (4) provides that the court may, on the application of a party, direct that 1 or more of s 63 (2), s 64 (2) or s 65 (2), (3) or (8) is to apply despite the party's failure to give notice.

Note 2 Noncompliance with this rule does not make any proceeding void (see r 1450 (Effect of failure to comply with rules)).

6751 Objection to hearsay evidence notice—civil proceedings

A notice of objection to the tender of hearsay evidence under the Evidence Act, section 68 (2) must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for that subsection.

6752 Tendency evidence notice

A notice of intention to adduce tendency evidence under the Evidence Act, section 97 must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 97.

Note The Evidence Act, s 100 (1) provides that the court may, on the application of a party, direct that the tendency rule is not to apply to particular tendency evidence despite the party's failure to give notice under s 97.

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6753 Coincidence evidence notice

A notice of intention to adduce coincidence evidence under the Evidence Act, section 98 must be in accordance with the form approved under the *Court Procedures Act 2004*, section 8 for section 98.

Note The Evidence Act, s 100 (2) provides that the court may, on the application of a party, direct that the coincidence rule is not to apply to particular coincidence evidence despite the party's failure to give notice under s 98.

Division 6.10.5 Exhibits, documents and things

6760 Meaning of *subpoenaed document or thing*—div 6.10.5

In this division:

subpoenaed document or thing means a document or thing, produced in a proceeding because of a subpoena, by someone who is not a party to the proceeding.

6761 Registrar to keep record of proceeding

(1) The registrar must keep a record of each proceeding.

(2) The registrar must—

(a) take charge of a document or thing that is an exhibit in the proceeding; and

(b) mark or otherwise label each exhibit so the exhibit has a unique identifier in a sequence of consecutive identifiers allocated to the exhibits of the party that put it into evidence; and

(c) prepare a list of the exhibits for the proceeding that shows—

(i) the party that put the exhibit into evidence; and

(ii) if the exhibit was produced because of a subpoena—the name of the addressee for the subpoena.

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(3) The list of exhibits forms part of the record of the proceeding.

(4) The registrar may treat 2 or more documents as a single exhibit.

6762 Custody of exhibits after proceeding

Unless the court otherwise orders, the registrar must keep exhibits in a proceeding in the court for at least—

(a) 28 days after the day judgment is given in the proceeding; or

(b) if leave to appeal from the judgment is given within that time—28 days after the day leave is given.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Note 2 Rule 5194 (Appeals to Court of Appeal—keeping exhibits) deals with the keeping of the exhibits if an appeal is started in the Court of Appeal from a judgment given in the proceeding.

6763 Duty of parties to claim exhibits

(1) The party that put an exhibit into evidence in a proceeding must apply to the registrar for the return of the exhibit as soon as practicable after—

(a) if an appeal is started in relation to the proceeding within the appeal period—the appeal is disposed of; or

(b) if an appeal is not started in relation to the proceeding within the appeal period—the appeal period ends.

(2) If the registrar has the exhibit, the registrar must give it to—

(a) the applicant; or

(b) if the exhibit belongs to someone who is not a party, and the application asks for it to be given to the person—the person.

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(3) If the registrar does not have the exhibit, the registrar must get the exhibit and give it to—

(a) the applicant; or

(b) if the exhibit is a subpoenaed document or thing produced by someone who is not a party, and the application asks for it to be given to the person—the person.

(4) If a party does not apply for the return of an exhibit put into evidence by the party, the registrar must—

(a) give the exhibit to the party or anyone else who appears to the registrar to be the owner or person entitled to possession of the exhibit; or

(b) if it is not practicable for the registrar to give the exhibit to the person mentioned in paragraph (a)—give notice to the party, the party's solicitor or anyone else who appears to the registrar to be the owner or person entitled to possession of the exhibit, stating that the person must, within 28 days after the notice is given—

(i) collect the exhibit from the registry; or

(ii) tell the registrar in writing that the person does not want the exhibit returned.

(5) If a party is given a subpoenaed document or thing, the party must return the document or thing to the addressee for the subpoena.

(6) This rule does not require a party to apply for the return of a subpoenaed document or thing.

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(7) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).

(8) In this rule:

appeal period, in relation to a proceeding, means 28 days after the day judgment is given in the proceeding.

6765 Requirement to give or send exhibit

(1) If the registrar is required to give an exhibit (including a subpoenaed document or thing) to a person under rule 6763 (Duty of parties to claim exhibits), the registrar must give or send the exhibit to the person in a way that seems reasonable to the registrar.

(2) This rule applies subject to any direction of the court under rule 6608.

6766 Disposal of exhibits

(1) This rule applies if—

(a) the registrar has given notice to someone under rule 6763 (4) (b) in relation to an exhibit; and

(b) at the end of 3 months after the day the notice is given, the exhibit has not been collected from the registry.

Note For the disposal of a document or thing produced on subpoena by a party that is not an exhibit, see r 6608 (Removal, return, inspection etc of subpoenaed documents and things).

(2) The registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.

(3) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.

(4) If the registrar returns, destroys or otherwise disposes of an exhibit under rule 6763 (Duty of parties to claim exhibits) or this rule, the registrar must ensure a note is placed on the court file specifying the

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exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.

(5) This rule applies subject to any direction of the court under rule 6608.

6767 Power to allow removal of exhibits etc

(1) This rule applies to a document or thing that the registrar has in relation to a proceeding, whether or not the document or thing—

(a) is an exhibit; or

(b) was produced on subpoena.

(2) The registrar must not permit the document or thing to be removed from the registry except on application signed by the solicitor for a party to the proceeding.

(3) The registrar may—

(a) permit the document or thing to be removed from the registry on any conditions the registrar considers appropriate; or

(b) refuse to permit the document or thing to be removed.

(4) If a solicitor removes the document or thing from the registry with the registrar's permission, the solicitor is taken to undertake to the court that—

(a) the document or thing will be kept in the personal custody of the solicitor or counsel briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the registry in the same condition, order and packaging in which it was removed, when directed by the registrar; and

(c) the solicitor will comply with the conditions (if any) to which the permission is subject.

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(5) This rule applies subject to any direction of the court under rule 6608 (Removal, return, inspection etc of subpoenaed documents and things).

Division 6.10.6 Taking evidence at trial from outside ACT but in Australia by audiovisual link or audio link

6800 Application for direction under Evidence (Miscellaneous Provisions) Act, s 20

(1) An application for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from participating States) may be made in a civil or criminal proceeding.

Note Pt 6.2 (Applications in proceedings) applies to an application or a direction under this rule.

(2) The application may be made orally.

(3) The application must be supported by an affidavit stating—

(a) why the evidence should be taken or submissions made by audiovisual link or audio link; and

(b) the nature of any evidence to be taken; and

(c) the number of witnesses to be examined; and

(d) whether issues of character are likely to be raised; and

(e) the expected duration of the evidence or submissions; and

(f) a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or submissions to be made; and

(g) that the requirements of the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (2) can be met.

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(4) In deciding whether to make the direction, the court may have regard to the following matters:

(a) the matters included in the applicant's affidavit;

(b) the cost and convenience to the witnesses and parties.

(5) Subrule (4) does not limit the matters to which the court may have regard.

6801 Directions for Evidence (Miscellaneous Provisions) Act, s 20

(1) If the court gives a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from participating States), it may, on application or its own initiative, direct the registrar to arrange for and coordinate the use of appropriate facilities in the ACT and the other jurisdiction.

(2) Without limiting subrule (1), the court may direct that—

(a) the registrar arrange for the evidence to be given, or the submissions to be made, at a court of the other jurisdiction or at another place approved by that court for the purpose; and

(b) an officer of the court of the other jurisdiction, or anyone else approved by that court for the purpose, be asked to be present to assist in the transmission of the evidence or submissions and, in particular, to—

(i) introduce witnesses and legal representatives; and

(ii) assist with the administration of oaths, if necessary; and

(iii) assist in carrying out any direction given or request made by the judicial officer hearing the evidence or submissions.

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Division 6.10.8 Taking evidence otherwise than at trial

6810 Definitions—div 6.10.8

In this division:

examination—

(a) means an examination of a person under an examination order; and

(b) includes a proceeding for the taking of evidence of a person conducted by a judicial authority of a place outside the ACT (including outside Australia) under a letter of request issued under an examination order.

examination order means an order—

(a) under rule 6813 (Order for taking evidence otherwise than at trial); or

(b) under the *Foreign Evidence Act 1994* (Cwlth), section 7 (Orders for taking evidence abroad) or section 10 (Orders for taking evidence abroad—inferior courts).

examiner, in relation to an examination, means the person before whom the examination is to be conducted under the examination order for the examination.

6811 Effect of court directions for examination order

The provisions of this division about the examination of a person under an examination order apply subject to—

(a) for an examination order under rule 6813—any directions of the court under rule 6813 (4); or

(b) for an examination order under the *Foreign Evidence Act 1994* (Cwlth)—any directions of the Supreme Court under that Act, section 8 (1).

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6812 Application of div 6.10.8 to letter of request

The provisions of this division about the examination of a person under an examination order apply, with any necessary changes, to a proceeding for the taking of evidence of a person under a letter of request issued under an examination order—

(a) as if the court or tribunal taking the evidence were an examiner appointed under this division; but

(b) subject to—

(i) the terms of the letter of request; and

(ii) if the court or tribunal is a court or tribunal of a foreign country—any convention dealing with the examination of witnesses to which Australia and the foreign country are parties.

6813 Order for taking evidence otherwise than at trial

(1) In any civil or criminal proceeding in the court, the court may, on the application of a party to the proceeding, make an order—

(a) for the examination of a person on oath at a place in or outside the ACT (including outside Australia) before a person appointed by the court; or

Note ***Oath*** includes affirmation (see Legislation Act, dict, pt 1).

(b) for the issue of a commission for the examination of a person on oath at a place in or outside the ACT (including outside Australia); or

(c) for the issue of a letter of request to a judicial authority of a place outside the ACT (including outside Australia) to take the evidence of a person (or cause it to be taken).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order or direction under this rule.

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(2) The court may make an order under subrule (1) only if it appears in the interests of justice to make the order.

(3) In deciding whether it is in the interests of justice to make the order, the court must have regard to—

(a) whether the person to be examined is willing or able to come to the ACT to give evidence in the proceeding; and

(b) whether the person will be able to give evidence material to any issue to be tried in the proceeding; and

(c) whether, having regard to the interests of the parties to the proceeding, justice will be better served by making or refusing to make the order.

(4) If the court makes an order under subrule (1) (a) or (b), it may, when it makes the order or subsequently, give any direction it considers just in relation to the examination.

(5) If the court makes an order under subrule (1) (c), it may include in the order a request about anything relating to the taking of the evidence, including, for example—

(a) the examination, cross-examination or re-examination of the person, whether the evidence is to be given orally, by affidavit or in another way; and

(b) the attendance of the legal representative of each party to the proceeding and the participation of the legal representatives in the examination.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

6814 When examination order may be made

The court may make an examination order at any stage of the proceeding.

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6815 Application for examination order

(1) Any party to a proceeding may apply for an examination order.

Note 1 An application for an order under the *Foreign Evidence Act 1994* (Cwlth) can only be made to the Supreme Court (see that Act, s 7 and s 10).

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for an examination order.

(2) The application must be supported by an affidavit.

6816 Appointment of examiner

(1) The court may appoint any of the following as an examiner:

(a) a judicial officer or other officer of the court;

(b) anyone else it considers appropriate.

(2) A judicial officer or other officer of the Supreme Court may only be appointed with the agreement of the Chief Justice.

(3) A judicial officer or other officer of the Magistrates Court may only be appointed with the agreement of the Chief Magistrate.

(4) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

6817 Documents for examiner

(1) A party who obtains an examination order must give the examiner copies of the documents in the proceeding necessary to inform the examiner of the relevant questions for the examination.

(2) If the documents in the proceeding are not sufficient to inform the examiner of the questions, the court must state the questions in the examination order or a later order.

Note Pt 6.2 (Applications in proceedings) applies to an application for a later order.

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(3) Subrule (1) does not apply if the examiner is a judicial officer or other officer of the court.

6818 Time and place of examination etc

(1) The examiner must set the time and place for the examination, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(2) The time set must be as soon as practicable after the making of the examination order.

(3) The examiner must tell the party who obtained the examination order of the time and place set for the examination at least 7 days before the day set for the examination.

(4) The party who obtained the examination order must give notice of the time and place set for the examination to the person to be examined and each other active party at least 3 days before the day set for the examination.

(5) Also, if the person to be examined is not a party to the proceeding, the party who obtained the examination order must serve the person with a subpoena under part 6.9 (Subpoenas) at least 3 days before the day set for the examination.

6819 Conduct of examination

(1) Subject to this division, an examination must be conducted in accordance with the procedure of the court.

Note The examination is an examination on oath (see r 6813 (1) (a) and (b) (Order for taking evidence otherwise than at trial)).

(2) Each party to the proceeding and each party's counsel and solicitor may attend the examination.

(3) The person examined may be cross-examined and re-examined, unless the court otherwise orders.

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(4) The examination, cross-examination and re-examination of the person examined is to be conducted in the same way as at a trial, unless the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

(5) The examiner may put any question to the person being examined about—

(a) the meaning of an answer given by the person; or

(b) anything arising during the examination, cross-examination or re-examination.

(6) The examiner may adjourn the examination from time to time or from place to place.

6820 Examination of additional people

(1) If the examiner is a judicial officer of a court, the examiner may, on the application of a party, examine a person not named or provided for in the examination order.

Note Pt 6.2 (Applications in proceedings) applies to an application under r (1).

(2) If the examiner is not a judicial officer of a court, the examiner may, with the written agreement of every active party to the proceeding, examine a person not named or provided for in the examination order.

(3) The examiner must attach the agreements of the parties to the deposition under rule 6822 (Recording evidence of examination) of a person examined under subrule (2).

6821 Objections by party or person being examined

(1) This rule applies if—

(a) the examiner is not a judicial officer of a court; and

(b) either—

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(i) a party to the proceeding objects to a question put to a person being examined; or

(ii) a person being examined objects to answering a question or producing a document or thing.

(2) The examiner must state to the parties the examiner's opinion, but must not decide, on the validity of the objection.

(3) The following matters must be set out in the deposition under rule 6822 (Recording evidence of examination) of the person examined, or in a statement attached to the deposition:

(a) the question;

(b) the ground for the objection;

(c) the examiner's opinion;

(d) except if the objection is based on privilege, the answer.

(4) On application by a party, the court may decide the validity of the objection.

Note Pt 6.2 (Applications in proceedings) applies to an application under r (4).

(5) If the court disallows the objection, it may—

(a) remit the examination back to the examiner with any necessary direction about the conduct of the examination; and

(b) make an order for the costs caused by the objection, including an order for costs against the person being examined.

6822 Recording evidence of examination

(1) The examiner must ensure evidence given at the examination is recorded, in writing or in another way, and authenticated by the examiner.

(2) The court or the examiner may give directions for making an audiovisual recording of the evidence at the examination.

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(3) If a transcript of the evidence is prepared, the person who prepares the transcript must certify that it is a correct transcript of the evidence recorded.

(4) The examiner must authenticate and sign any deposition or other recording.

(5) If evidence given at an examination is recorded in a deposition, it must—

(a) contain, in question and answer form, the evidence of the person examined; and

(b) be transcribed and read over by or to the person examined in the examiner's presence and in the presence of the parties wishing to attend; and

(c) be signed by the person examined or, if the person refuses to sign the deposition, by the examiner for the person.

6823 Authentication and filing of deposition of examination etc

(1) This rule applies if a deposition under rule 6822 (Recording evidence of examination) is produced.

(2) The examiner must write on the deposition a statement signed by the examiner of the time spent in taking the examination and the fees (if any) received for the examination.

(3) The examiner must send the following to the registrar:

(a) the original record of the deposition;

(b) any transcript of that record;

(c) any audiovisual recording;

(d) any exhibits obtained during the examination.

(4) The registrar must file in the court the documents mentioned in subrule (3) (a) and (b).

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6824 Special report on examination

An examiner may report to the court on—

(a) the examination; or

(b) the absence of a person from the examination; or

(c) the conduct of a person at the examination.

6825 Default of witness at examination

(1) This rule applies if–

(a) a person is required by subpoena or a notice under rule 6483 (Special witness—notice instead of subpoena) to attend before an examiner; and

(b) the person does not attend or refuses to take an oath for the examination, answer a lawful question or produce a document or thing.

(2) The examiner must, if asked by a party, give the party a certificate signed by the examiner of the facts mentioned in subrule (1).

(3) On the filing of the certificate, on application by any party, the court may order the person—

(a) to attend before the examiner, be sworn, answer the question or to produce the document or thing; and

(b) to pay any costs caused by the person's refusal.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

6826 Costs of examination

The court may make an order about the costs of an examination under an examination order.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

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6827 Witness expenses for witness at examination

A person appearing before an examiner to be examined, or to produce a document or thing, is entitled to payment of the same amount for expenses and loss of time that the person would have been entitled to on attending to give evidence, or to produce a document or thing, at the trial of the proceeding before the court.

6828 Admissibility of deposition of examination

(1) A deposition under rule 6822 (Recording evidence of examination) is admissible in evidence at the trial of a proceeding only if—

(a) the deposition is made under an examination order; or

(b) the deposition is admissible under the Evidence Act; or

(c) a territory law provides for the deposition to be admissible.

Note A ***territory law*** includes these rules (see Legislation Act, s 98).

(2) A deposition purporting to be signed by the person before whom it was taken is receivable in evidence without proof of the signature of the person.

6829 Letter of request

(1) This rule applies if an examination order is made for the issue of a letter of request to the judicial authority of a place outside the ACT.

(2) The party obtaining the order must give the registrar—

(a) a draft of the letter of request; and

(b) any interrogatories and cross-interrogatories to accompany the letter of request; and

(c) if the place is a foreign country where English is not an official language—a written translation, in an official language of the country, of the documents mentioned in paragraphs (a) and (b); and

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(d) the further copies of each of the documents mentioned in paragraphs (a) and (b) that the registrar directs; and

(e) an undertaking in accordance with subrule (5).

(3) The translation mentioned in subrule (2) (c) must be certified, in writing, by the person making it to be a correct translation of the document.

(4) The certificate of the person making the translation must also state the person's full name and address and qualifications for making the translation.

(5) The undertaking given to the registrar under subrule (2) must be an undertaking by the party obtaining the order, or the party's solicitor—

(a) to be responsible for all expenses incurred by the court, or by anyone at the court's request, in relation to the letter of request (the ***incurred expenses***); and

(b) to pay the registrar the amount of the incurred expenses on being given an account of them by the registrar.

(6) Despite the making of the order and subrules (2) (e), the registrar may—

(a) require the person giving the undertaking to provide security, in a form satisfactory to the registrar, for the anticipated expenses in relation to the letter of request; and

(b) refuse to take action in relation to the letter of request until the security is provided.

(7) The person giving the undertaking must pay the amount of the incurred expenses to the registrar not later than 7 days after the day the person is given an account of them by the registrar.

(8) If the amount of the incurred expenses is not paid in accordance with subrule (7), the court may, on its own initiative—

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(a) order the party who obtained the order to pay the unpaid amount of the incurred expenses; and

(b) if the party is a plaintiff—stay the proceeding, until the unpaid amount is paid, to the extent that it relates to all or part of a claim for relief by that party; and

(c) if the party is a defendant—make any order it considers appropriate, including an order that, until the unpaid amount is paid, the defendant be taken not to have filed a notice of intention to respond or defence or not be allowed to use in evidence any deposition of a witness obtained under the letter of request.

6830 Use of evidence taken in examination

(1) The court may, on the conditions (if any) it considers just, allow a party to a proceeding to tender as evidence in the proceeding—

(a) a person's evidence taken in an examination held under an order made in the proceeding under rule 6813 (Order for taking evidence otherwise than at trial); or

(b) a record of that evidence.

Note 1 The *Foreign Evidence Act 1994* (Cwlth), s 9, s 12, s 13, s 14 and s 15 deal with the use of evidence taken under that Act.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) However, evidence of a person tendered under subrule (1) is not admissible if the evidence would not have been admissible if it had been given or produced at the hearing.

(3) Also, the court may exclude from the proceeding evidence taken under an order under rule 6813 even if it is otherwise admissible, if it considers that it is in the interests of justice to exclude the evidence.

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(4) Without limiting rule 6016 (Application in proceeding—oral application), an application under this rule may be made orally, unless the court otherwise orders on its own initiative.

(5) In this rule:

evidence, in relation to an examination, includes—

(a) a document produced at the examination (including an exhibit); and

(b) answers made, whether in writing, or orally and reduced to writing, to any interrogatories presented at the examination.

6831 Use of evidence taken in an examination—subsequent proceedings

(1) If the court makes an order under rule 6813 (Order for taking evidence otherwise than at trial) for a committal proceeding (the ***primary order***), it may include in the primary order an order that evidence taken outside the ACT under the primary order may, subject to subrules (3), (4) and (5), be tendered in a proceeding (the ***subsequent proceeding***) that is—

(a) a criminal proceeding that results from the committal proceeding; or

(b) a related civil proceeding.

(2) If the court makes an order under rule 6813 for a criminal proceeding other than a committal proceeding (the ***primary order***), it may include in the primary order an order that evidence taken outside the ACT under the primary order may, subject to subrules (3), (4) and (5), be tendered in a proceeding (also the ***subsequent proceeding***) that is a related civil proceeding.

(3) If the court has included in an order under rule 6813 (the ***primary order***) an order under this rule, the court before which the subsequent proceeding is brought may allow a party to the subsequent proceeding to tender as evidence in the subsequent proceeding—

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(a) a person's evidence taken in an examination held under the primary order; or

(b) a record of that evidence.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

(4) However, evidence of a person tendered under subrule (3) is not admissible if—

(a) at the hearing of the subsequent proceeding the court is satisfied that the person is in the ACT and is able to attend the hearing; or

(b) the evidence would not have been admissible had it been given or produced at the hearing.

(5) Also, the court before which the subsequent proceeding is brought may exclude from the subsequent proceeding evidence taken in an examination held under an order under rule 6813 even if it is otherwise admissible, if it considers that it is in the interests of justice to exclude the evidence.

(6) In this rule:

related civil proceeding, in relation to a criminal proceeding, means any civil proceeding arising from the same subject matter from which the criminal proceeding arose, and, in particular, includes—

(a) a proceeding under the *Confiscation of Criminal Assets Act 2003*; and

(b) a proceeding for the recovery of tax, or any duty, levy or charge payable to the Territory.

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6832 Amendment and revocation of examination orders

(1) The court may amend or revoke an order made under rule 6813 (Order for taking evidence otherwise than at trial) (a ***primary order***).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(2) The power given by subsection (1) includes the power to—

(a) include in a primary order an order under rule 6831; or

(b) amend or revoke an order under rule 6831 that is included in a primary order.

(3) If a primary order that includes an order under rule 6831 is revoked, the order under rule 6831 is taken to have been revoked at the same time.

6833 Exclusion of evidence in criminal proceeding

This division does not affect the power of the court in hearing a criminal proceeding to exclude evidence that has been obtained illegally or that would, if admitted, operate unfairly against the defendant.

Division 6.10.9 Taking evidence for Australian and foreign courts and tribunals

6840 Definitions—div 6.10.9

In this division:

applicable convention, in relation to a request issued by or on behalf of a court or tribunal of a foreign country, means a convention dealing with examination of witnesses to which Australia and the foreign country are parties.

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Australian court means an entity authorised to exercise an adjudicative function—

(a) whether on behalf of a court or otherwise; and

(b) whether or not the entity is authorised to require the answering of questions or the production of documents.

proceeding means—

(a) a proceeding in any civil or commercial matter; or

(b) a proceeding in or before a court in relation to the commission of an offence or an alleged offence, or the confiscation of criminal assets.

request includes any commission, order or other process issued for the making of an application under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal).

requesting court, in relation to a request or an order under rule 6843 made on a request, means the court or tribunal outside the ACT (including outside Australia) by or on behalf of which the request is issued.

6841 Application—div 6.10.9

(1) This division applies to—

(a) an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal); and

(b) an examination under the order.

(2) This division applies subject to—

(a) the terms of the request for the order and any applicable convention; and

(b) in relation to the application of a relevant rule of this division—any direction by the court consistent with the request and any applicable convention.

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(3) In this rule:

relevant rule means any of the following rules:

- rule 6842 (Application for div 6.10.9 order)
- rule 6845 (Appointment of examiner for div 6.10.9)
- rule 6846 (Attendance by div 6.10.9 order applicant at examination)
- rule 6847 (Procedure for taking evidence under div 6.10.9 order)
- rule 6848 (Keeping of exhibits at div 6.10.9 examination)
- rule 6849 (Certificate of order and depositions—div 6.10.9 examination).

6842 Application for div 6.10.9 order

(1) An application for an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) may only be made by—

(a) a person nominated by the requesting court; or

(b) if no-one is nominated—the Attorney-General.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

(2) An application mentioned in subrule (1) or for any other order under this division must be filed, but need not be served on anyone.

6843 Order relating to taking evidence for Australian or foreign court or tribunal

(1) This rule applies if, on application to the court under rule 6842 for evidence to be taken in the ACT, the court is satisfied that—

(a) the application is made under a request issued by or on behalf of a court or tribunal exercising jurisdiction in a place outside the ACT (including outside Australia); and

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(b) the evidence to which the application relates is to be taken for a proceeding that has been, or may be brought, before the requesting court.

(2) The court may, by order, make any provision for the taking of evidence in the ACT that appears to the court to be appropriate for the purpose of giving effect to the request.

(3) Without limiting subrule (2), an order under this rule may provide for all or any of the following:

(a) the examination of witnesses, orally or in writing;

(b) the production of documents;

(c) the inspection, photographing, preservation, custody or detention of property;

(d) the taking of samples of property and the carrying out of any experiments on or with property;

(e) the medical examination of a person;

(f) without limiting paragraph (e), the taking and testing of samples of blood from a person.

(4) An order under this rule may require a stated person to take steps—

(a) that the court considers appropriate for the purpose of giving effect to the request; and

(b) that could be taken to obtain evidence for the purpose of a proceeding in the court (whether or not the proceeding is of the same kind as the proceeding to which the application for the order relates).

(5) Subrule (4) does not prevent the court making an order requiring a person to give testimony, orally or in writing, otherwise than on oath if this is asked for by the requesting court.

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(6) An order under this rule must not require a person to—

(a) state what documents relevant to the proceeding to which the application for the order relates are or have been in the person's possession; or

(b) produce any documents other than stated documents.

6844 Div 6.10.9 order for criminal proceeding

An order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) must not be made in relation to a criminal proceeding unless the requesting court is a court of a place in Australia or New Zealand.

6845 Appointment of examiner for div 6.10.9

(1) The court may appoint any of the following as an examiner:

(a) a judicial officer or other officer of a court;

(b) anyone else it considers suitable.

(2) A judicial officer or other officer of the Supreme Court may only be appointed with the agreement of the Chief Justice.

(3) A judicial officer or other officer of the Magistrates Court may only be appointed with the agreement of the Chief Magistrate.

(4) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

6846 Attendance by div 6.10.9 order applicant at examination

The applicant for an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) may attend and take part in the examination held under the order.

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6847 Procedure for taking evidence under div 6.10.9 order

(1) The applied provisions of division 6.10.8 (Taking evidence otherwise than at trial) apply, subject to this division and with any necessary changes, to an examination to which this division applies as if it were an examination to which that division applies.

(2) For this rule, the ***applied provisions*** of division 6.10.8 are the following:

- rule 6810 (Definitions—div 6.10.8)
- rule 6817 (1) (Documents for examiner)
- rule 6818 (Time and place of examination etc)
- rule 6819 (Conduct of examination)
- rule 6820 (Examination of additional people)
- rule 6821 (Objections by party or person being examined)
- rule 6822 (Recording evidence of examination)
- rule 6823 (Authentication and filing of deposition of examination etc)
- rule 6824 (Special report on examination)
- rule 6827 (Witness expenses for witness at examination).

6848 Keeping of exhibits at div 6.10.9 examination

If, in an examination to which this division applies, the examiner receives an exhibit from a person, the examiner must keep it and send it to the registrar with the deposition and other documents required by rule 6823 (3) (Authentication and filing of deposition of examination etc).

6849 Certificate of order and depositions—div 6.10.9 examination

On receiving the original record of the deposition, and any transcript of that record, taken in an examination, the registrar must—

(a) issue a sealed certificate for the examination; and

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(b) give the certificate, and the documents mentioned in the certificate, to the Attorney-General.

Note See approved form 6.14 (Certificate of order and depositions—div 6.10.9 examination) AF2006-422.

6850 Privilege of witnesses—div 6.10.9 examination

(1) A person cannot be compelled under an order under rule 6843 (Order relating to taking evidence for Australian or foreign court or tribunal) to give any evidence that the person could not be compelled to give in a similar proceeding in—

(a) the ACT; or

(b) the place where the requesting court exercises jurisdiction.

(2) Subrule (1) (b) does not apply unless the person's claim to be exempt from giving evidence is—

(a) supported by a statement contained in the request (whether it is supported unconditionally or subject to conditions that are fulfilled); or

(b) conceded by the applicant for the order.

(3) If the claim is not supported or conceded, the person may be required to give the evidence to which the claim relates, but that evidence must not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(4) In this rule:

giving evidence includes—

(a) producing a document; and

(b) answering a question.

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6851 Privilege of witnesses—unsupported claim etc for div 6.10.9 examination

(1) This rule applies to evidence that is the subject of a claim for privilege under rule 6850 (1) (b) if the claim is not supported or conceded in accordance with that rule.

(2) The deposition, and any transcript, recording the evidence must—

(a) be kept separate from any other deposition or transcript in the examination; and

(b) when given to the registrar, be accompanied by a statement signed by the examiner setting out the claim for privilege and the ground on which it was made.

(3) The registrar—

(a) must include the statement of the claim for privilege, and a request to decide the claim, with the documents sent to the Attorney-General under rule 6849 (Certificate of order and depositions—div 6.10.9 examination); and

(b) must not include with those documents the deposition, or any transcript, recording the evidence that is the subject of the claim.

(4) After the requesting court decides the claim for privilege, the registrar must—

(a) if the requesting court rejects the claim—send it the deposition, and any transcript, recording the evidence to which the claim relates; or

(b) if the requesting court upholds the claim—return the deposition and any transcript to the person claiming privilege.

(5) The registrar must also tell the person claiming privilege, and the applicant for the order for examination, about the decision of the requesting court.

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Part 6.10A Trans-Tasman proceedings

Division 6.10A.1 Trans-Tasman proceedings—general

6860 Terms in Trans-Tasman Proceedings Act

A term used in the Trans-Tasman Proceedings Act has the same meaning in this chapter.

Note For example, the following terms are defined in the Trans-Tasman Proceedings Act, s 4:

- audio link
- audiovisual link
- document
- enforcement
- entitled person
- given
- liable person
- NZ judgment
- party
- proceeding
- registered NZ judgment.

Division 6.10A.2 Trans-Tasman proceedings—orders under Trans-Tasman Proceedings Act

6861 Trans-Tasman proceedings—originating application

(1) A proceeding for an order under the Trans-Tasman Proceedings Act must be started by an originating application.

Note See approved form 2.7 (Originating application) AF2006-252.

(2) The application must be accompanied by an affidavit that states the material facts on which the plaintiff relies that are necessary to give the defendant fair notice of the case to be made against the defendant at the hearing.

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6862 Trans-Tasman proceedings—applications in proceedings

An application in a proceeding for an order under the Trans-Tasman Proceedings Act must be made in accordance with part 6.2 (Applications in proceedings).

Note See approved form 6.2 (Application in proceeding) AF2010-103.

6863 Trans-Tasman proceedings—application for interim relief

(1) An application for an order for interim relief under the Trans-Tasman Proceedings Act, section 25 must be made by an originating application.

Note See approved form 6.25 (Trans-Tasman proceedings—originating application for order for interim relief) AF2011-144.

(2) The application must be accompanied by an affidavit stating—

(a) if the person has started a proceeding in a New Zealand court—

(i) that the person has started a proceeding in a New Zealand court; and

(ii) the relief sought in the New Zealand proceeding; and

(iii) the steps taken in the New Zealand proceeding; or

(b) if the person intends to start a proceeding in a New Zealand court—

(i) when the intended proceeding will be started; and

(ii) the court in which the intended proceeding is to be started; and

(iii) the relief to be sought in the intended proceeding; and

(c) the interim relief sought; and

(d) why the interim relief should be given.

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Division 6.10A.3 Trans-Tasman proceedings—service of subpoenas in New Zealand

6864 Application—div 6.10A.3

This division applies to a proceeding to which the Trans-Tasman Proceedings Act, part 5, division 2 applies.

Note The Trans-Tasman Proceedings Act does not apply to a subpoena issued in an excluded family proceeding. ***Excluded family proceeding*** is defined in that Act, s 4.

6865 Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand

(1) An application for leave to serve a subpoena in New Zealand must be made by application in the proceeding in which the subpoena is issued.

Note 1 See approved form 6.26 (Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand) AF2011-143.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

(2) The application must be accompanied by—

(a) a copy of the subpoena in relation to which leave is sought; and

Note 1 See approved form 6.27 (Trans-Tasman proceedings—subpoena) AF2011-148.

Note 2 Pt 6.9 (Subpoenas) applies to the subpoena.

(b) an affidavit stating, briefly but specifically, the following:

(i) the name, occupation and address of the person to be served with the subpoena (the ***addressee***);

(ii) whether the addressee is at least 18 years old;

(iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;

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(iv) details of the steps taken to find out whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the addressee;

(v) the date by which it is intended to serve the subpoena in New Zealand;

(vi) details of the amounts to be given to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;

Note 1 The addressee is entitled to payment of a reasonable amount for expenses incurred in complying with the subpoena (see Trans-Tasman Proceedings Act, s 37 (1)).

Note 2 Before granting leave under the Trans-Tasman Proceedings Act to serve the subpoena, the court may require the person making the application to undertake to meet the expenses reasonably incurred by the addressee in complying with the subpoena if those expenses are more than the allowances and travelling expenses to be provided to the addressee at the time of service of the subpoena (see Trans-Tasman Proceedings Act, s 37 (4)).

Note 3 ***Expenses***, in relation to a subpoena—see the Trans-Tasman Proceedings Act, s 4.

(vii) details of how the amounts mentioned in subparagraph (vi) are to be given to the addressee;

(viii) if the subpoena is a subpoena to give evidence—an estimate of the time that the addressee will be required to attend, to give evidence;

(ix) any facts or circumstances known to the person making the affidavit that may give cause for the subpoena to be set aside under the Trans-Tasman Proceedings Act, section 36 (2) or (3) (Setting aside Australian subpoenas).

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6866 Trans-Tasman proceedings—application to set aside subpoena served in New Zealand

(1) An application for leave to set aside a subpoena served in New Zealand must be made by application in the proceeding in which the subpoena was issued.

Note Pt 6.2 (Applications in proceedings) applies to the application.

(2) The application must be filed in the court in which the order granting leave to serve the subpoena in New Zealand was made.

(3) The application must be accompanied by—

(a) a copy of the subpoena; and

(b) an affidavit stating—

(i) the material facts on which the application is based; and

(ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

6867 Trans-Tasman proceedings—noncompliance with subpoena served in New Zealand

(1) This rule applies in relation to a subpoena issued by a court (the ***issuing court***) if leave to serve the subpoena in New Zealand has been given under the Trans-Tasman Proceedings Act, section 31.

(2) A party may apply to the issuing court for the issue of a certificate of non-compliance with the subpoena.

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(3) An application may be made—

(a) if the proceeding in which the subpoena was issued is before the court—orally to the court; or

(b) by application.

Note 1 If a person named in a subpoena fails to comply with it, the court that issued the subpoena may issue a certificate of noncompliance under the Trans-Tasman Proceedings Act, s 38. See approved form 6.28 (Trans-Tasman proceedings—certificate of noncompliance with subpoena) AF2011-145.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

Note 3 A certificate of noncompliance is ***issued*** if it has been sealed or stamped by the court (see dict).

(4) The application must be accompanied by—

(a) a draft of the certificate of noncompliance; and

(b) a copy of the subpoena; and

(c) a copy of the order giving leave to serve the subpoena; and

(d) an affidavit of service of the subpoena; and

(e) a further affidavit stating the following:

(i) whether an application was made to set aside the subpoena;

(ii) the material in support of any application in subparagraph (i);

(iii) any order that disposed of the application in subparagraph (i);

(iv) the material facts relied on for the issue of a certificate of non-compliance.

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Division 6.10A.4 Trans-Tasman proceedings—remote appearances

6868 Trans-Tasman proceedings—application for order for use of audio link or audiovisual link from New Zealand

(1) A party to a proceeding to which the Trans-Tasman Proceedings Act part 6, division 2 applies may apply for an order that evidence be taken, or submissions be made, by audio link or audiovisual link.

Note 1 See approved form 6.29 (Trans-Tasman proceedings—application for order to use audio link or audiovisual link) AF2011-146.

Note 2 Pt 6.2 (Applications in proceedings) applies to the application.

(2) Subrule (1) does not apply to a request mentioned in rule 6866 (3) (b) (ii).

Division 6.10A.5 Trans-Tasman proceedings—enforcement of NZ judgments

6869 Trans-Tasman proceedings—notice of registration of NZ judgment

(1) A party must not take any step to enforce a registered NZ judgment, in the period mentioned in the Trans-Tasman Proceedings Act, section 74 (2), unless the party has filed an affidavit stating that notice of the registration of the NZ judgment has been given, in accordance with the Trans-Tasman Proceedings Act, section 73 and any regulations made under that Act.

(2) If a party against whom the registered NZ judgment is enforceable is out of Australia, the documents mentioned in subrule (1) may be served without leave of the court.

Note Div 6.8.9 otherwise provides for service of documents out of Australia.

(3) The party must file an affidavit proving service of the documents mentioned in subrule (1) before any step is taken to enforce the registered NZ judgment.

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6870 Trans-Tasman proceedings—application for extension of time to give notice of registration of NZ judgment

(1) An application by an entitled person for an extension of the time within which to give notice of the registration of a NZ judgment, under the Trans-Tasman Proceedings Act, section 73 (3) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment) AF2011-147.

Note 2 ***Entitled person***, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

(2) An application under subrule (1) must be accompanied by an affidavit stating—

(a) briefly but specifically, the grounds relied on in support of the application; and

(b) the material facts relied on in support of the application; and

(c) why notice was not given within time.

6871 Trans-Tasman proceedings—application to set aside registration of NZ judgment

(1) An application by a liable person to set aside the registration of a NZ judgment, under the Trans-Tasman Proceedings Act, section 72 (1) must be made by originating application in the proceeding in which the judgment was registered.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment) AF2011-147.

Note 2 ***Liable person***, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

(2) An application under subrule (1) must be accompanied by an affidavit stating—

(a) briefly but specifically, the grounds on which the registration of the judgment should be set aside; and

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(b) the material facts relied on in support of the application.

6872 Trans-Tasman proceedings—application for stay of enforcement of registered NZ judgment

(1) An application by a liable person for a stay of the enforcement of a registered NZ judgment, so that the liable person can appeal the judgment, under the Trans-Tasman Proceedings Act, section 76 (1) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment) AF2011-147.

Note 2 ***Liable person***, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

(2) An application under subrule (1) must be accompanied by an affidavit stating—

(a) the order sought; and

(b) briefly but specifically, the grounds relied on in support of the order sought; and

(c) the material facts relied on in support of the application.

6873 Trans-Tasman proceedings—application for extension of time to apply for stay of enforcement of registered NZ judgment

(1) An application by a liable person for an extension of the time within which to apply for a stay of the enforcement of a registered NZ judgment, so that the liable person can appeal the judgment, under the Trans-Tasman Proceedings Act, section 76 (3) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment) AF2011-147.

Note 2 ***Liable person***, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

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(2) An application under subrule (1) must be accompanied by an affidavit stating—

(a) the order sought; and

(b) briefly but specifically, the grounds relied on in support of the application; and

(c) the material facts relied on in support of the application; and

(d) why the application was not made within time.

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Part 6.11 Miscellaneous—ch 6

6900 Power to make orders

If a provision of these rules gives the court a power that can be exercised by making an order, the provision gives a power to make the order.

Example

Rule 1128 (Default judgment—setting aside etc) provides that the court may amend or set aside a judgment entered under division 2.11.3, and any enforcement of it. A judgment under the division may be set aside by making an order to that effect.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

6901 Orders may be made on conditions

Subject to these rules, the court may make an order under these rules on any conditions it considers appropriate.

6902 Leave may be given on conditions

If the court gives leave under a provision of these rules, it may give the leave on the conditions it considers appropriate.

6903 References to court acting on its own initiative

An express reference in a provision of these rules to the court acting on its own initiative does not, by implication, prevent the court acting on its own initiative under another provision of these rules.

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6904 Mandatory order to registrar etc

(1) On application by a party to a proceeding or on its own initiative, the court may order the registrar or another officer of the court to do, or not do, any act relating to the registrar's, or other officer's, duties.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule for an order or an order otherwise ordering.

(2) If a party applies for an order in subrule (1), the party must give reasonable notice of the application to the registrar or other officer unless the court otherwise orders.

6905 Notices must be written

A notice required or allowed to be given under these rules must be given in writing.

6906 Mistakes in orders or court certificates

(1) This rule applies if—

(a) there is a clerical mistake in an order or certificate of the court or an error in a record of an order or certificate of the court; and

(b) the mistake or error resulted from an accidental slip or omission.

(2) On application by a party to the proceeding or on its own initiative, the court may at any time correct the mistake or error.

Note Pt 6.2 (Applications in proceedings) applies to an application for correction of the mistake or error.

(3) Part 2.7 (Amendment) does not apply to a correction made under this rule.

6907 Power to make practice notes

(1) The rule-making committee may make practice notes for these rules.

(2) A practice note is taken to be made by the rule-making committee if it is signed by 3 or more committee members, 1 of whom must be the member mentioned in the *Court Procedures Act 2004*, section 9 (2)

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(a) and another of whom must be the member mentioned in the Act, section 9 (2) (d) or (e).

Note The member mentioned in the *Court Procedures Act 2004*, s 9 (2) (a) is the Chief Justice (or the Chief Justice's delegate), the member mentioned in s 9 (2) (d) is the Chief Magistrate (or the Chief Magistrate's delegate) and the member mentioned in s 9 (2) (e) is another magistrate appointed by the Chief Magistrate.

(3) A practice note may approve a document exchange for these rules.

(4) A practice note is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

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Chapter 7 Transitional

Part 7.1 Transitional—Supreme Court

7000 Transitional—existing proceedings in Supreme Court on 1 July 2006

(1) Unless the Supreme Court otherwise orders, these rules apply to an existing proceeding.

(2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may make any order it considers appropriate to resolve the difficulty.

(3) The court may make an order under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(4) In this rule:

existing proceeding means a proceeding started in the Supreme Court, but not completed, before 1 July 2006.

Note See sch 4 (Scale of costs), r 4.12 (2) for transitional provisions in relation to costs.

7002 Transitional—construction of outdated references to Supreme Court rules etc

These rules apply as if—

(a) a reference in an Act, statutory instrument or document, to the *Supreme Court Rules 1937*, the *Supreme Court (Admission of Legal Practitioners) Rules 1998* or the *Supreme Court (Corporations) Rules 2003* were, in relation to anything to which these rules apply, a reference to these rules; and

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(b) a reference in an Act, statutory instrument or document, to a provision of the *Supreme Court Rules 1937*, the *Supreme Court (Admission of Legal Practitioners) Rules 1998* or the *Supreme Court (Corporations) Rules 2003* were, in relation to anything to which these rules apply, a reference to the corresponding provision of these rules; and

(c) a reference in an Act, statutory instrument or document, to something that is no longer applicable because of the making of these rules, and for which there is a corresponding thing under these rules, were a reference to the thing under these rules, if the context allows and if otherwise appropriate.

Examples for par (c)

1 A 'notice of motion' is taken to be an 'application'.

2 A reference to entering an appearance in relation to an originating process in a civil proceeding is taken to be a reference to filing a notice of intention to respond in the court or filing a defence (if the defendant chooses not to file a notice of intention to respond but files a defence).

3 A reference to taxation of costs is taken to be a reference to assessment of costs.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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Part 7.2 Transitional—Magistrates Court

7011 Transitional—existing proceedings in Magistrates Court on 1 January 2007

(1) Unless the Magistrates Court otherwise orders, these rules apply to an existing proceeding.

(2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the Magistrates Court may make any order it considers appropriate to resolve the difficulty.

(3) The Magistrates Court may make an order under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(4) In this rule:

existing proceeding means a proceeding started in the Magistrates Court, but not completed, before 1 January 2007.

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Schedule 1 Expert witness code of conduct

(see r 1201)

1.1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

(a) to provide an expert's report for use as evidence in a proceeding or proposed proceeding; or

(b) to give opinion evidence in a proceeding or proposed proceeding.

1.2 General duty to court

(1) An expert witness has a paramount duty to assist the court impartially on matters relevant to the expert's area of expertise.

(2) This paramount duty to the court, overrides any duty to a party to the proceeding or other person retaining the expert.

(3) An expert witness is not an advocate for a party.

1.3 Content of report

Every report prepared by an expert witness for use in court must state the opinion of the expert and state or provide the following:

(a) the expert's name and address;

(b) an acknowledgment that the expert has read this code and agrees to be bound by it;

(c) the expert's qualifications to prepare the report;

(d) the material facts and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);

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(e) the reasons for each opinion expressed and references to any literature or other materials used by the expert to support each opinion;

(f) if applicable, that a particular question, issue or matter falls outside the expert's area of expertise;

(g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and the person's qualifications;

(h) to the extent that any opinion expressed by the expert involves the acceptance of another person's opinion, the identification of the other person and the opinion expressed by the person;

(i) a declaration that—

(i) the expert has made all the inquiries which the expert believes are desirable and appropriate, other than for any matters identified specifically in the report; and

(ii) no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court;

(j) any qualification of an opinion expressed in the report without which the report is, or may be, incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research, or insufficient data or for any other reason;

(l) if the report is lengthy or complex, a brief summary of the report at the beginning of the report.

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1.4 Supplementary report following change of opinion

(1) This section applies if an expert witness has provided a report for use in court to a party, or the party's legal representative (the ***earlier report***) and the expert witness subsequently changes their opinion on a material matter.

(2) The expert witness must immediately provide a supplementary report to the party, or the party's legal representative, stating or providing the information mentioned in rule 1.3 (a), (d), (e), (g) to (l) and, if applicable, rule 1.3 (f).

(3) In any subsequent report, whether prepared under subrule (2) or not, the expert witness may refer to material contained in the earlier report without repeating it.

1.5 Duty to comply with court's directions

If directed by the court, an expert witness must—

(a) confer with any other expert witness; and

(b) give the court a report identifying—

(i) the matters on which the experts agree; and

(ii) the matters on which the experts disagree; and

(iii) the reasons for the experts not agreeing; and

(c) comply with any direction of the court in a timely way.

1.6 Experts' conference etc

An expert witness must—

(a) exercise independent judgement in relation to every conference held, or report prepared, under the court's direction under rule 1.5, and must not act on any instruction or request to withhold or avoid agreement; and

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(b) try to reach agreement with the other expert witness, or witnesses, on any issue on which they disagree, or failing agreement, try to identify and clarify the reasons why.

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Schedule 2 Interest rates

Part 2.1 Interest up to judgment

(see r 51, r 304, r 1104, r 1120 and r 1616)

Table 2.1 Interest up to judgment—Supreme Court

column 1 item	column 2 period	column 3 rate of interest % per year
1	1 January 1974 to 31 December 1980	10.00
2	1 January 1981 to 31 December 1985	14.00
3	1 January 1986 to 31 December 1987	18.00
4	1 January 1988 to 31 December 1989	16.00
5	1 January 1990 to 30 June 1990	21.00
6	1 July 1990 to 31 December 1990	18.00
7	1 January 1991 to 30 June 1991	16.00
8	1 July 1991 to 30 June 1993	15.00
9	1 July 1993 to 30 April 2001	10.00
10	1 May 2001 to 9 January 2005	9.00
11	10 January 2005 to 30 June 2010	9.00

2.1 Interest up to judgment after 30 June 2010—Supreme Court

For the Supreme Court, the rate of interest up to judgment for a period after 30 June 2010 is—

(a) for the period from 1 July to 31 December in a year—the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before the start of the period; and

(b) for the period from 1 January to 30 June in a year—the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before the start of the period.

Table 2.2 Interest up to judgment—Magistrates Court

column 1 item	column 2 period	column 3 rate of interest % per year
1	any period before 1 July 1981	13.375
2	1 July 1981 to 30 June 1982	15.00
3	1 July 1982 to 31 December 1982	17.50
4	1 January 1983 to 31 December 1983	15.50
5	1 January 1984 to 30 June 1984	12.375
6	1 July 1984 to 31 December 1984	14.75
7	1 January 1985 to 30 June 1985	13.75
8	1 July 1985 to 31 December 1985	17.25
9	1 January 1986 to 30 June 1986	20.625
10	1 July 1986 to 31 December 1986	18.125
11	1 January 1987 to 30 June 1987	19.25
12	1 July 1987 to 29 February 1988	18.75
13	1 March 1988 to 28 February 1989	16.125

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column 1 item	column 2 period	column 3 rate of interest % per year
14	1 March 1989 to 31 August 1989	17.875
15	1 September 1989 to 14 January 1991	20.75
16	15 January 1991 to 14 July 1991	17.50
17	15 July 1991 to 14 January 1992	15.75
18	15 January 1992 to 14 July 1992	13.75
19	15 July 1992 to 14 January 1993	11.50
20	15 January 1993 to 31 January 1994	10.00
21	1 February 1994 to 31 July 1995	9.00
22	1 August 1995 to 31 March 1997	10.75
23	1 April 1997 to 30 April 1998	9.55
24	1 May 1998 to 9 January 2005	8.45
25	10 January 2005 to 30 June 2010	9.00

2.2 Interest up to judgment after 30 June 2010—Magistrates Court

For the Magistrates Court, the rate of interest up to judgment for a period after 30 June 2010 is—

(a) for the period from 1 July to 31 December in a year—the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before the start of the period; and

(b) for the period from 1 January to 30 June in a year—the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before the start of the period.

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Part 2.2 Interest after judgment

(see r 1619 and r 1620)

Table 2.3 Interest after judgment—Supreme Court

column 1 item	column 2 period and case (if any)	column 3 rate of interest % per year
1	any period ending before 1 May 1986: (a)if judgment was entered before 1 October 1977 (b)if judgment was entered on or after 1 October 1977	 5.00 10.00
2	1 May 1986 to 30 June 1990	15.00
3	1 July 1990 to 31 December 1991	20.00
4	1 January 1992 to 30 June 1993	15.00
5	1 July 1993 to 30 April 2001	12.00
6	1 May 2001 to 9 January 2005	11.00
7	10 January 2005 to 30 June 2010	11.00

2.3 Interest on judgment after 30 June 2010—Supreme Court

For the Supreme Court, the rate of interest on judgment for a period after 30 June 2010 is—

(a) for the period from 1 July to 31 December in a year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the start of the period; and

(b) for the period from 1 January to 30 June in a year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the start of the period.

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Table 2.4 Interest after judgment—Magistrates Court

column 1 item	column 2 period and case (if any)	column 3 rate of interest % per year
1	any period ending before 1 May 1986: (a)if judgment was entered before 1 October 1977 (b)if judgment was entered on or after 1 October 1977	 5.00 10.00
2	1 May 1986 to 30 June 1990	15.00
3	1 July 1990 to 31 December 1991	20.00
4	1 January 1992 to 30 June 1993	15.00
5	1 July 1993 to 9 April 1995	12.00
6	10 April 1995 to 31 July 1995	9.00
7	1 August 1995 to 31 March 1997	10.75
8	1 April 1997 to 30 April 1998	9.55
9	1 May 1998 to 9 January 2005	8.45
10	10 January 2005 to 30 June 2010	11.00

2.4 Interest on judgment after 30 June 2010—Magistrates Court

For the Magistrates Court, the rate of interest on judgment for a period after 30 June 2010 is—

(a) for the period from 1 July to 31 December in a year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the start of the period; and

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(b) for the period from 1 January to 30 June in a year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the start of the period.

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Schedule 3 Costs amount—debts, liquidated demands, company windings-up, enforcement orders and certificates of registration

Part 3.1 Claim for debt or liquidated demand

(see r 51, r 304 and r 1100)

Table 3.1 Prescribed costs amount—claim for debt or liquidated demand

column 1 item	column 2 court and amount claimed	column 3 prescribed amount ($)
1	Magistrates Court—< $10 000	491.00
2	Magistrates Court—≥ $10 000 but < $25 000	998.00
3	Magistrates Court—≥ $25 000 but < $40 000	1 193.00
4	Magistrates Court—≥ $40 000 but < $50 000	1 340.00
5	Magistrates Court—≥ $50 000 but < $250 000	1 489.00
6	Supreme Court—any amount	1 489.00

Part 3.2 Default judgment

(see r 1121)

Table 3.2 Prescribed costs amount—default judgment

column 1 item	column 2 court and amount claimed	column 3 prescribed amount ($)
1	Magistrates Court—< $10 000	637.00

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column 1 item	column 2 court and amount claimed	column 3 prescribed amount ($)
2	Magistrates Court—≥ $10 000 but < $25 000	1 274.00
3	Magistrates Court—≥ $25 000 but < $40 000	1 530.00
4	Magistrates Court—≥ $40 000 but < $50 000	1 722.00
5	Magistrates Court—≥ $50 000 but < $250 000	1 912.00
6	Supreme Court—any amount	1 912.00

Part 3.3 Company winding-up

(see r 1740)

Table 3.3 Prescribed costs amount—company winding-up

column 1 item	column 2 claimed amount ($)
1	4 334.00

Part 3.4 Enforcement orders

(see r 1741)

Table 3.4 Prescribed costs amount—enforcement orders

column 1 item	column 2 court and amount claimed	column 3 amount claimed—with agent ($)	column 4 amount claimed—no agent ($)
1	Magistrates Court—< $10 000	832.00	605.00
2	Magistrates Court—≥ $10 000 but < $25 000	1 689.00	1 229.00
3	Magistrates Court—≥ $25 000 but < $40 000	2 016.00	1 467.00
4	Magistrates Court—≥ $40 000 but < $50 000	2 270.00	1 650.00
5	Magistrates Court—≥ $50 000 but < $250 000	2 521.00	1 834.00
6	Supreme Court—any amount	2 521.00	1 834.00

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Part 3.5 Certificate of registration

(see r 2010B)

Table 3.5 Prescribed costs amount—certificate of registration

column 1 item	column 2 court and amount claimed	column 3 claimed amount ($)
1	Magistrates Court—< $10 000	87.00
2	Magistrates Court—≥ $10 000 but < $25 000	176.00
3	Magistrates Court—≥ $25 000 but < $40 000	211.00
4	Magistrates Court—≥ $40 000 but < $50 000	237.00
5	Magistrates Court—≥ $50 000 but < $250 000	264.00
6	Supreme Court—any amount	264.00

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Schedule 4 Scale of costs

(see r 1700)

Part 4.1 Scale of costs—general

Note to pt 4.1

Div 2.17.2 (Entitlement to costs) includes the following rules which relate to the assessment of costs under this schedule:

- r 1734 (Costs—assessment costs)
- r 1735 (Costs—counsel's advice and settling documents)
- r 1736 (Costs—evidence)
- r 1737 (Costs—solicitor advocate)
- r 1738 (Costs—retainer for counsel)
- r 1739 (Costs—counsel's fees for applications).

4.1 Costs—general care and conduct

In addition to an amount that is to be allowed under an item in part 4.2, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount the registrar considers reasonable having regard to the circumstances of the proceeding, including, for example, the following:

(a) the complexity of the proceeding;

(b) the difficulty and novelty of any question raised in the proceeding;

(c) the importance of the proceeding, including to the party;

(d) the amount involved;

(e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor;

(f) the number and importance of the documents prepared or perused, without regard to the length of the documents;

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(g) the time spent by the solicitor;

(h) research and consideration of questions of law and fact.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

4.2 Costs—registrar's discretion

(1) For a matter for which a cost is provided for in part 4.2, the registrar may allow an additional amount, reduce the amount to be allowed, or change the method of calculating costs, as the registrar considers appropriate.

(2) For a matter for which a cost is not provided for in part 4.2, the amount to be allowed is the cost the registrar considers reasonable.

(3) If the nature and importance, or the difficulty or urgency, of a proceeding and the justice of the case justify it, the registrar may allow an increase of not more than 30% of the solicitor's costs allowed on the assessment of the costs of the proceeding.

4.3 Costs—letters sent by email

The amount to be allowed for a letter sent as an email, or as an attachment to an email, is the amount that would be allowed if the letter were sent by post or another way.

4.4 Costs—allowance on affidavits to include attendances

The amount allowed for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the person making the affidavit to swear the affidavit includes all attendances on the person making the affidavit to read over and settle the affidavit.

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4.5 Costs—affidavit made by 2 or more people etc

The registrar may make any further allowance the registrar considers reasonable in relation to an affidavit if—

(a) the affidavit is sworn by 2 or more people; or

(b) the affidavit must be sent somewhere else, or an agent has to be employed, for the affidavit to be sworn.

4.6 Costs—documents to be served together

(1) If 2 or more documents can be served at the same time on a party to a proceeding, the documents must be served together.

(2) The registrar must not allow any further amount for service if more than 1 document is served at the same time.

4.7 Costs—agency correspondence

In a proceeding in which there is an agent solicitor, the registrar may make any further allowance for agency correspondence that the registrar considers reasonable if satisfied the correspondence has been special and extensive.

4.8 Costs—attendance to instruct counsel

(1) If a solicitor who holds an unrestricted practising certificate, or who has held a practising certificate for at least 2 years, attended in court to instruct counsel in a proceeding, the registrar may allow—

(a) the amount set by the prescribed scale of costs for a solicitor who holds an unrestricted practising certificate, or who has held a practising certificate for at least 2 years, to attend to instruct counsel, if satisfied that the importance or difficulty of the proceeding, or the responsibility involved in instructing counsel, justified the solicitor's attendance; or

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(b) the amount set by the prescribed scale of costs for a solicitor other than a solicitor mentioned in paragraph (a) to attend to instruct counsel, if satisfied the attendance of that solicitor only was justified; or

(c) the amount set by the prescribed scale of costs for a clerk to attend to instruct counsel, if satisfied that the attendance of a clerk only was justified.

(2) If a solicitor other than a solicitor mentioned in subrule (1) (a) attended in court to instruct counsel in a proceeding, the registrar may allow—

(a) the amount set by the prescribed scale of costs for a solicitor other than a solicitor mentioned in subrule (1) (a) to attend to instruct counsel, if satisfied the attendance of the solicitor was justified; or

(b) the amount set by the prescribed scale of costs for a clerk to attend to instruct counsel, if satisfied that the attendance of a clerk only was justified.

(3) If a clerk attended in court to instruct counsel in a proceeding, the registrar may allow the amount for a clerk to attend to instruct counsel, only if satisfied the clerk was competent to instruct counsel in the proceeding.

4.9 Costs—parties with same solicitor

If the same solicitor represents 2 or more parties and the solicitor does work for 1 or some of them separately that could have been done for some or all of them together, the registrar may disallow costs for the unnecessary work.

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4.10 Costs—counsel drawing and settling documents

If the registrar allows costs for counsel to draw and settle a document, the registrar must not allow the costs of a conference with counsel in relation to the document, unless there were special reasons making the conference necessary.

4.11 Costs—premature brief

The registrar must not allow costs for the preparation and delivery of a brief to counsel on a trial that did not take place if the costs were incurred prematurely.

4.12 Costs—transitional

(1) In this rule:

commencement day means the day the *Court Procedures Amendment Rules 2017 (No 3)*, rule 35 commences.

(2) A solicitor is entitled to charge and be allowed the costs set out in this schedule for work done or services performed on or after the commencement day.

(3) However, if work done or services performed by a solicitor after the commencement day was assessed before the commencement day, rule 4.12 as in effect immediately before the commencement day continues to apply to the work and services.

(4) Rule 4.12 as in effect immediately before the commencement day continues to apply to work done or services performed by a solicitor before the commencement day.

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Part 4.2 Scale of costs—items

column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
Division 4.2.1 Instructions		
1	to sue or defend, to appeal or oppose an appeal	181.30
2	for statement of claim, petition, special case or counterclaim	181.30
3	for defence	155.20
4	for— (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar's office (for example, an account or deed); or (e) adding parties by order; or (f) a bond or other deed; or (g) retaining counsel, including preparing retainer	64.80

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	129.40
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the assessment of a bill of costs	129.40
7	for brief to advise on evidence	116.60
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	129.40
9	for brief in preparation for trial	the amount the registrar considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
Division 4.2.2 Drawing			
10	for an originating process or counterclaim	135.30	or, if longer than 700 words, 19.20 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	90.70	or, if longer than 400 words, 19.20 per 100 words
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	83.00	or, if longer than 400 words, 19.20 per 100 words
13	a formal affidavit, including an affidavit of service	45.50	
14	any other document	35.90	or, if longer than 100 words, 21.30 per 100 words
Division 4.2.3 Engrossing			
15	of a document	5.70	per 100 words

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
Division 4.2.4 Copies			
16	of any document, or of multiple documents copied at the same time—		
	(a) for each of the first 10 copies; or	3.60	per page
	(b) for each additional copy up to 100 copies; or	1.60	per page
	(c) for each additional copy over 100 copies	0.60	per page
Division 4.2.5 Perusal			
17	of— (a) an originating process; or (b) a pleading; or (c) an application in a proceeding; or (d) interrogatories; or (e) a special case; or (f) a notice to admit	63.90	or, if longer than 800 words, 7.20 per 100 words
18	of any other document, if it is necessary to peruse	7.20	per 100 words
19	of a document by scanning it, if it is not necessary to peruse	7.10	or, if the document has more than 10 pages, the additional amount the registrar considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
Division 4.2.6 Attendances		
20	for personal service, if necessary, of 1 or more documents at the same time	96.80
21	for service of 1 or more documents at the same time— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	39.20

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column 1 **item**	**column 2** **matter in relation to which charge is made**	**column 3** **charge ($)**
22	by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	258.80 per hour

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
23	by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	181.30 per hour

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column 1 **item**	**column 2** **matter in relation to which charge is made**	**column 3** **charge ($)**
24	by a clerk, necessarily or properly engaged— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	90.60 per hour
25	other than an attendance already mentioned, in court or any hearing without counsel—	
	(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or	388.00 per hour
	(b) by any other solicitor	271.80 per hour
26	by a solicitor involving a high degree of skill and responsibility	388.00 per hour

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
27	in court or chambers or before the registrar— (a) to take a reserved judgment; or (b) to mention a matter; or (c) for an adjournment; or (d) for settling the terms of and entering orders; or (e) for another reason	103.50 or 258.80 per hour
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	32.20
29	formal telephone attendance	32.20
30	telephone attendance leaving message only	16.10
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	51.90 or 64.80 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	32.20 or 22.60 per quarter hour

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
33	if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—	
	(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or	an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 510.80
	(b) a clerk has attended in place of the solicitor	an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 388.00

Division 4.2.7 Letters

34	ordinary letter	45.00	or 21.90 per 100 words
35	special letter	74.70	or 21.90 per 100 words
36	formal letter—short letter, without legal content	21.80	
37	circular letters after the first	9.90	
38	fax copy or telex, including attendance to send	51.00	
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	13.50	
40	receiving, printing and filing incoming letter received by email	14.70	

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
41	printing any attachment to an email, or multiple attachments to an email printed at the same time—	
	(a) for each of the first 10 pages; or	3.60 per page
	(b) for each additional page up to 100 copies; or	1.60 per page
	(c) for each additional page over 100 copies	0.60 per page
Division 4.2.8 Witness expenses		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	1 269.20 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	133.90 per day
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
Division 4.2.9 Disbursements		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

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Schedule 5 Jurisdiction of registrar

(see r 6250)

Part 5.1 Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Supreme Court

column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
1	282	Person with legal disability—approval of settlement etc
2	317	Third party—extent bound by judgment between plaintiff and defendant
3	706	Urgent orders before start of proceeding
4	707	Interim distribution
5	708	Interim income
6	709	Payment before finding out everyone interested
7	716	Disposal of property other than land
8	729	Division 2.9.4 order without notice etc
9	730	Division 2.9.4 order without trial

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
10	sdiv 2.9.4.2 (other than r 745 (Freezing orders—costs))	Freezing orders
11	sdiv 2.9.4.3 (other than r 755 (Search orders—costs))	Search orders
12	766	Receiver—agreement to act as etc
13	767	Receiver—application for order appointing
14	772	Receiver—default
15	782	Sale of land—order
16	783	Sale of land—conduct of sale
17	784	Sale of land—certificate of sale result
18	1240	Application—div 2.12.3
19	1241	Service of expert reports
20	1243	Expert evidence to be covered by expert report
21	1246	Tender of expert report
22	1505	Trial—defendant or plaintiff not appearing
23	1521	Separate decisions on questions—order

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
24	1530	Assessors
25	1531	Referee—referral of question etc to
26	1532	Referee—appointment
27	1533	Referee—amendment of order referring question etc
28	1536	Referee—report
29	1537	Referee—proceeding on report
30	1548	Partial judgment for damages to be assessed
31	1607	Orders—certified duplicate
32	1617	Payment into court—amount recovered by person with legal disability
33	1855	Costs—review by court
34	2220	Seizure and sale order—sale at best price obtainable
35	2406	Charging order—application to enforce charge
36	2407 (2) (b)	Charging order—procedure against partnership property for partner's separate order debt
37	2443	Enforcement—undertakings
38	2501	Contempt—applications generally

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
39	div 2.18.17	Enforcement—arrest warrants for absconding defendants
40	2600	Interpleader—application by stakeholder
41	2606	Interpleader—failure to give notice of claim
42	2608	Interpleader—admission of claim
43	2609	Interpleader—enforcement officer's interpleader application
44	3049, if on the registrar's report	Administration bond—addition or reduction after required but before given
45	3050, if on the registrar's report	Administration bond—addition or reduction after given
46	3051	Administration bond—proceeding on bond
47	3052	Administration bond—application by surety
48	3069 (1) to (5)	Caveat—setting aside
49	3071	Caveat—leave to withdraw
50	3081	Revocation of grant—application
51	3092 (2)	Division 3.1.9 proceeding—starting

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
52	3114	Failure of executor to prove will— Administration and Probate Act, s 25
53	3115	Failure by executor, administrator or trustee to comply with beneficiary's request etc
54	3116	Grant of administration—grant to child
55	pt 3.2	Adoption
56	pt 3.5	Cross-vesting
57	3359	Disputed election—particulars of contested ballot papers
58	3362	Disputed election—substitution of plaintiff
59	3481	Registration of judgment—application to set aside
60	pt 3.9	Habeas corpus
61	3564	Judicial review—stay or dismissal of application for statutory order of review on return date
62	3566	Judicial review—power of the court to stay or dismiss applications in certain circumstances
63	4020	Criminal proceedings—failure of individual to comply with subpoena etc

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
64	4021	Criminal proceedings—failure of corporation to comply with subpoena etc
65	4050 (1) (b)	Criminal proceedings—production of person in custody
66	4708	Supreme Court criminal proceedings—removal of solicitor by court
67	4711	Supreme Court criminal proceedings—withdrawal of solicitor
68	4721	Supreme Court bail application in relation to accused person
69	4722	Supreme Court bail application by informant
70	4723	Supreme Court application for review of bail by unrepresented accused person
71	4750	Supreme Court criminal proceedings—application to set aside or stay proceeding
72	4751	Supreme Court criminal proceedings—application for separate trials
73	4752	Supreme Court criminal proceedings—other pre-trial applications
74	part 5.2	Appeals from registrar
75	5054	Appeals to Supreme Court—stay and reinstatement

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
76	5055	Appeals to Supreme Court—security for costs
77	div 5.3.2	Appeals to Supreme Court—leave to appeal
78	div 5.3.3	Appeals to Supreme Court—leave to appeal out of time
79	5101	Appeals to Supreme Court—requirements for notice of appeal etc
80	5112	Appeals to Supreme Court—cross-appeal
81	5115	Appeals to Supreme Court—notice of contention
82	5140	Appeals to Supreme Court—absence of party
83	5171	Appeals to Supreme Court—discontinuance of appeal
84	5172	Appeals to Supreme Court—competency of appeal
85	5173	Appeals to Supreme Court—costs for failure to apply for appeal to be struck out as incompetent
86	5174 (4)	Appeals to Supreme Court—dismissal by consent
87	5191	Appeals to Supreme Court—want of prosecution of appeal

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
88	5193	Further evidence on appeal to Supreme Court—*Magistrates Court Act 1930*, s 214
89	5301	Appeals to Court of Appeal—stay and reinstatement
90	5302	Appeals to Court of Appeal—security for costs
91	div 5.4.2	Appeals to Court of Appeal—leave to appeal from interlocutory orders
92	div 5.4.3	Appeals to Court of Appeal—leave to appeal out of time from final judgments
93	5403	Appeals to Court of Appeal—requirements for notice of appeal etc
94	5405	Appeals to Court of Appeal—time for filing notice of appeal
95	5413	Appeals to Court of Appeal—cross-appeal
96	5416	Appeals to Court of Appeal—notice of contention
97	5441	Appeals to Court of Appeal—absence of party
98	5471	Appeals to Court of Appeal—discontinuance of appeal
99	5472	Appeals to Court of Appeal—competency of appeal

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
100	5473	Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent
101	5510 (2) and (3) (b)	Appeals to Court of Appeal—registrar's decision on application for leave to appeal out of time against conviction or sentence
102	5531	Appeals to Court of Appeal—grounds of appeal against conviction or sentence
103	5532	Appeals to Court of Appeal—trial judge's report for appeal against conviction or sentence
104	5535 (1) (b)	Appeals to Court of Appeal—order for production of prisoner
105	5536	Appeals to Court of Appeal—fine paid to be kept pending appeal
106	5538	Appeals to Court of Appeal—solicitor wants to withdraw from acting for convicted person
107	5603	Appeals to Court of Appeal—want of prosecution of appeal
108	5606	Appeals to Court of Appeal—further evidence on appeal
109	pt 5.5	Orders to review Magistrates Court decisions
110	5751	Reference appeals to Supreme Court—application for reference appeal

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
111	5754	Reference appeals to Supreme Court—discontinuance of reference appeal
112	5774	Reference appeals to Court of Appeal—discontinuance of reference appeal
113	5804	Special case to Supreme Court—person with legal disability
114	5807	Special case to Supreme Court—insufficient statement of case
115	5833	Special case to Court of Appeal—preparation and settling
116	6142 (3) (c)	Rejecting documents—abuse of process etc
117	6201	Order that jurisdiction in proceeding be exercised by judge instead of associate judge
118	6522	Application for leave to serve subpoena in New Zealand
119	6524	Application for leave to serve subpoena in New Zealand need not be served etc
120	6762	Custody of exhibits after proceeding
121	6816	Appointment of examiner
122	6817	Documents for examiner
123	6904	Mandatory order to registrar etc

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column 1 item	column 2 provision , and if relevant, case	column 3 provision heading
124	6906, if order or certificate of judge	Mistakes in orders or court certificates
125	pt 6.10A	Trans-Tasman proceedings

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Part 5.2 Jurisdiction related to Corporations Act exercisable by registrar of Supreme Court

column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
1		1.8	power to give directions
2		2.13	power to grant leave to creditor, contributory or officer to be heard in proceeding or be added as a defendant, etc
3		2.14	power to direct an inquiry in relation to a corporation's debts, etc
4	section 227		power to declare that conditions prescribed by division 3 of part 2E.1 have been satisfied
5	sections 247A and 247B		power to order inspection of books and to authorise use and copying of information
6	section 252E		power to order meeting of members of registered scheme
7	section 266 (4)		power to extend period for lodgment of notice in relation to charge

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
8	section 267 (3)		power to give leave to enforce charge
9	section 274		power to rectify register of charges
10	section 283AE (2) (a)		power to appoint body corporate as trustee for debenture holders
11	section 283EC		power to make an order for meeting of debenture holders to direct trustee
12	section 283HA		power to give directions or determine any questions of application of trustee for debenture holders
13	section 283HB (1)		power to make an order in relation to borrowing corporations
14	section 283HB (1) (c)		power to order security for debentures to be enforceable
15	section 411	3.3 3.4 3.5	power to make order in relation to administration of compromise or arrangement etc

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
16	section 418A		power to make declaration about validity of controller's appointment and in relation to control of property
17	section 419		power to make order relieving person who incurs liability in belief that properly appointed as a receiver
18	section 419A		power to relieve controller from liability
19	section 420B		power to authorise managing controller to dispose of property despite prior charge
20	section 420C		power to authorise receiver to carry on corporation's business during the winding-up
21	section 423	4.1	power to inquire into conduct of controller
22	section 424		power to give directions in relation to controller's functions and powers
23	section 425	9.1	power to fix amount of remuneration of a receiver
24	section 429 (3)		power to extend time for report

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
25	section 434B		power to remove redundant controller
26	section 438D		power to direct administrator to give a report
27	section 439A (6)		power to extend the convening period fixed by subsection 439A (5)
28	section 440B		power to grant leave to enforce a charge if an administrator has been appointed
29	section 440C		power to grant leave to take possession of property
30	section 440D		power to grant leave to begin or proceed with a proceeding in a court against a company that is in administration, or in relation to any of its property
31	section 440F		power to grant leave to begin or proceed with enforcement process in relation to the property of a company
32	section 440G (7)		power to authorise a court officer to take action or to make a payment that would be prohibited

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
33	section 440J		power to grant leave to take enforcement action under a guarantee
34	section 441D		power to limit powers of chargee in relation to charged property
35	section 441H		power to limit powers of receiver etc in relation to property used by company
36	section 442C		power to grant leave to administrator to dispose of encumbered property
37	section 443B (8)		power to grant relief of administrator from personal liability for rent
38	section 444B (2)		power to extend time for execution of deed of company arrangement
39	section 444C (2)		power to grant leave to act inconsistently with deed of company arrangement

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
40	section 444E (3)		power to grant leave to person bound by deed of company arrangement to begin or proceed with enforcement process in relation to property of company
41	section 444F		power to order secured creditor or owner or lessor of property not to take certain actions
42	section 445B		power to make an order cancelling a variation of a deed of company arrangement
43	section 445D		power to make order terminating a deed of company arrangement
44	section 445G		power to avoid or validate deed of company arrangement
45	section 447A		power to make order to bring administration to an end
46	section 447B		power to make order to protect interests of company's creditors during an administration

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
47	section 447C		power to declare whether administrator is validly appointed
48	section 447D		power to give directions to administrator
49	section 447E		power to make order about supervision of administrator of company or deed of company arrangement
50	section 449B		power to make order about removal and appointment of administrator
51	sections 449C and 449D		power to make order in relation to vacancy in office of administrator of company or in office of administrator of deed of company arrangement
52	section 449E (1) (c) and (1A) (c)	9.2	power to determine administrator's remuneration
53	section 449E (2)	9.2A	power to review administrator's remuneration
54	sections 459F, 459H, 459J, 459L, 459M and 459N		power to make order in relation to statutory demands

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
55	sections 459A, 459B (except in relation to applications under part 2F.1), 459C, 459D, 459P, 459R, 459S, 459T, 461, 462, 464, 465B, 465C, 466, 467, 467A and 467B (except in relation to applications under part 2F.1)	pt 6.5	power to make orders in relation to winding-up applications
56	section 468		power in relation to validation of disposition of property
57	section 468A		power in relation to authorisation of transfer of shares
58	section 470 (2) (b)		power to direct service of copy of order on another person
59	section 471B		power to give leave to begin or proceed with proceeding or enforcement process
60	section 472	5.5 6.1	power to appoint official liquidator (provisionally or otherwise)

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
61	section 473 (1)	7.1	power to remove liquidator
62	section 473 (2)	9.3	power to determine provisional liquidator's remuneration
63	sections 473 (3)	9.4	power to determine liquidator's remuneration
64	sections 473 (5) and (6)	9.4A	power to review liquidator's remuneration
65	section 473 (7)	7.2	power to fill vacancy in office of official liquidator
66	section 473 (8)		power to declare what may be done by liquidator, if more than 1 liquidator is appointed by the court
67	section 474 (2)		power to order that property vest in liquidator
68	section 475 (8)	7.3	power to grant leave for payment of costs and expenses incurred in preparing report under section 475
69	section 479		power to give directions in matters arising in winding-up
70	section 480	7.5	power to release liquidator and deregister company

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
71	section 481	7.7	power to order preparation of report on accounts of liquidator
72	section 482		power to make an order— (a) to stay the winding up of a company either indefinitely or for a limited time; or (b) to terminate the winding up of a company on a day specified in the order
73	section 483 (1)		power to require payment of money or transfer of property
74	section 483 (2)		power to order payment of money
75	section 483 (3)	7.8	power to order payment of a call
76	section 483 (4)		power to order payment of amount due into a bank named in the order
77	section 484	8.1 8.2 8.3	power to appoint special manager
78	section 486		power to make order for inspection of books by creditors or contributories

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
79	section 488 (2)	7.9	power to grant leave to distribute a surplus
80	section 490		power to grant leave to company to wind up voluntarily
81	section 495 (4)		power to make order in relation to conduct of meeting in course of members' voluntary winding-up
82	section 496 (3)		power to order that list of creditors be sent to creditors in members' voluntary winding-up
83	section 497 (3)		power to order that list of creditors be sent to creditors in creditors' voluntary winding-up
84	section 500		power to make order about execution and civil proceedings
85	section 502	7.2	power to appoint liquidator
86	section 503		power to remove liquidator

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
87	section 504	9.4A	power to review liquidator's remuneration in voluntary winding-up
88	section 507 (6)		power to sanction resolution to accept shares as consideration for sale of property of company
89	section 507 (9)		power to give directions necessary for arbitration
90	section 507 (10)		power to approve liquidator's exercise of powers in creditors' voluntary winding-up
91	section 509 (6)		power to order ASIC to deregister company on specified day
92	section 510 (3)		power to settle dispute about value of security or lien or amount of debt or set-off
93	section 511 (1) (a)		power to decide question in winding-up of company
94	section 511 (1) (b)		power to make order in relation to an application to the court to exercise powers which might be exercised if a company were being wound up by the court

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
95	section 532 (2)		power to grant leave for person to be appointed as liquidator
96	section 536	7.11 11.2 11.8	power to make order in relation to supervision of liquidators
97	section 542 (3) (a)		power to give directions in relation to destruction of books of company
98	section 543 (1)		power to make order about the investment of surplus funds
99	section 544 (2)		power to order account of funds in hands of liquidator, audit or payment of money by liquidator
100	section 545		power to direct liquidator to incur particular expense
101	section 551		power to give leave for member of committee of inspection to accept extra benefit etc
102	section 552		power to give direction or permission if no committee of inspection is appointed

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
103	section 554A	14.1	power to estimate or determine value of debts and claims of uncertain value in liquidation
104	section 554G		power to grant leave to secured creditor to amend valuation of security in proof of debt
105	section 564		power to make order in favour of creditors who give company indemnity for costs of litigation
106	sections 568, 568B, 568E and 568F	10.2	power to make order in relation to disclaimer of onerous property
107	sections 583 and 585	10.3	power in relation to winding up Part 5.7 bodies
108	sections 596A, 596B, 596F, 597, 597A and 597B	11.3 11.6 11.7 11.9	power to make order in relation to examinations
109	sections 600A to 600D		power to make order in relation to creditor's resolutions
110	section 601AH (2)		power to order reinstatement of registration of company

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
111	section 601AH (3)		power to— (a) validate anything done between deregistration of a company and its reinstatement; and (b) make any other order the court considers appropriate
112	section 601BJ (2)		power to approve modification in constituent documents of registered company
113	section 601CC (9)		power to order restoration of name of registered Australian body to the Register
114	section 601CL (10)		power to order restoration of name of registered foreign company to the Register
115	section 1071D (4)	12.2	power to make order in relation to a person summoned
116	section 1071F		power to make an order in relation to a company's refusal to register a share transfer
117	section 1071H (6)		power to make an order to remedy default in issuing certificate etc

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column 1 item	column 2 provision of Corporations Act	column 3 rule in sch 6	column 4 description (for information only)
118	section 1274		power to make order if failure to give, amend etc document
119	section 1303		power to order that books be available for inspection
120	section 1319		power to give directions in relation to meetings
121	section 1321	14.1	power to make order in appeal from decision of administrator, receiver or liquidator
122	section 1322		power to make order in relation to irregularities
123	section 1325D		power to make order where contravention of a provision of chapter 6 due to inadvertence
124	section 1335		power to make order about costs

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Part 5.3 Jurisdiction related to ASIC Act exercisable by registrar of Supreme Court

column 1 item	column 2 provision of the ASIC Act	column 3 rule	column 4 description (for information only)
1	section 79 (4)		power to extend period to give notice of intention to have statements made at examination admitted

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Part 5.4 Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Magistrates Court

(see r 6251)

column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
1	282	Person with legal disability—approval of settlement etc
2	317	Third party—extent bound by judgment between plaintiff and defendant
3	716	Disposal of property other than land
4	729	Division 2.9.4 order without notice etc
5	730	Division 2.9.4 order without trial
6	sdiv 2.9.4.2 (other than r 745 (Freezing orders—costs))	Freezing orders
7	sdiv 2.9.4.3 (other than r 755 (Search orders—costs))	Search orders
8	1240	Application—div 2.12.3
9	1241	Service of expert reports

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column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
10	1243	Expert evidence to be covered by expert report
11	1246	Tender of expert report
12	1505	Trial—defendant or plaintiff not appearing
13	1521	Separate decisions on questions—order
14	1530	Assessors
15	1531	Referee—referral of question etc to
16	1532	Referee—appointment
17	1533	Referee—amendment of order referring question etc
18	1536	Referee—report
19	1537	Referee—proceeding on report
20	1548	Partial judgment for damages to be assessed
21	1607	Orders—certified duplicate
22	1617	Payment into court—amount recovered by person with legal disability
23	1855	Costs—review by court
24	2220	Seizure and sale order—sale at best price obtainable

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column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
25	2443	Enforcement—undertakings
26	2501	Contempt—applications generally
27	2600	Interpleader—application by stakeholder
28	2606	Interpleader—failure to give notice of claim
29	2608	Interpleader—admission of claim
30	2609	Interpleader—enforcement officer's interpleader application
31	3918 (4)	Application for arbitration—discontinuance
32	3924	Arbitration—party may be represented
33	3928 (4)	Arbitration—service of medical reports
34	3930	Arbitration—doctor's evidence to be covered by medical report
35	3933 (2)	Arbitration—tender of medical report
36	3934	Arbitration—party may apply for medical referee etc
37	3937	Arbitration—assessment of worker by medical referee
38	3952 (4)	Conduct of arbitration—directions and orders if remedy against employer and stranger

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column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
39	3960 (2)	Arbitration—payment on worker's acceptance
40	3961 (3)	Arbitration—payment on dependant's etc acceptance
41	3962 (3)	Arbitration—no prompt acceptance of submission or payment
42	3965 (1)	Arbitration—setting aside or amending award
43	3967 (1)	Registered agreement—application for amendment or cancellation
44	4020	Criminal proceedings—failure of individual to comply with subpoena etc
45	4021	Criminal proceedings—failure of corporation to comply with subpoena etc
46	4050 (1) (b)	Criminal proceedings—production of person in custody
47	part 5.2	Appeals from registrar
48	6142 (3) (c)	Rejecting documents—abuse of process etc
49	6610 (2) or (6)	Disposal of subpoenaed documents and things produced
50	6613	Documents and things in custody of court
51	6762	Custody of exhibits after proceeding
52	6816	Appointment of examiner

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column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
53	6817	Documents for examiner
54	6904	Mandatory order to registrar etc
55	6906, if order or certificate of magistrate	Mistakes in orders or court certificates
56	pt 6.10A	Trans-Tasman proceedings

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Schedule 6 Corporations Rules

(see r 3270)

Part 6.1 Corporations Rules—preliminary

1.1 Name of rules

The rules in this schedule are the *Corporations Rules*.

1.2 .

Note These rules do not include a r 1.2.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

1.3 Application of sch 6 and provisions of these rules

(1) Unless the Supreme Court otherwise orders—

(a) this schedule applies to a proceeding in the court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003; and

(b) part 6.15A applies to a proceeding in the court under the Cross-Border Insolvency Act.

(2) The other provisions of these rules apply, as far as they are relevant and not inconsistent with this schedule—

(a) to a proceeding in the Supreme Court under the Corporations Act, or the ASIC Act, that is started on or after 12 November 2003; and

(b) to a proceeding in the court under the Cross-Border Insolvency Act that is started on or after the commencement of part 6.15A.

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(3) Unless the Supreme Court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, that were in force immediately before 12 November 2003, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was started before that date.

Note Because of the definition of ***this Act*** in the Corporations Act, s 9, a reference to the Corporations Act includes a reference to the Corporations Regulations.

1.4 Terms used in Corporations Act

A term used in the Corporations Act has the same meaning in this schedule.

Note Terms used in this schedule (including the notes to those rules) that are defined in the Corporations Act include the following:

- ABN (short for 'Australian Business Number') (see s 9)
- ACN (short for 'Australian Company Number') (see s 9)
- ARBN (short for 'Australian Registered Body Number') (see s 9)
- ASIC (see s 9)
- body (see s 9)
- body corporate (see s 9)
- books (see s 9)
- company (see s 9)
- corporation (see s 57A)
- daily newspaper (see s 9)
- foreign company (see s 9)
- official liquidator (see s 9)
- Part 5.1 body (see s 9)
- Part 5.7 body (see s 9)
- register (see s 9)
- registered liquidator (see s 9)
- registered office (see s 9)
- statutory demand (see s 9).

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1.5 Definitions—sch 6

In this schedule:

applicant means a person claiming interlocutory relief in a proceeding.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cwlth).

Corporations Regulations means the *Corporations Regulations 2001* (Cwlth).

Cross-Border Insolvency Act means the *Cross-Border Insolvency Act 2008* (Cwlth) including, unless the contrary intention appears, the Model Law.

defendant means a person against whom relief (except interlocutory relief) is claimed under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not.

interlocutory process means an interlocutory process in a proceeding.

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in the Cross-Border Insolvency Act, schedule 1, with the modifications set out in that Act, part 2.

originating process means an originating process in a proceeding.

plaintiff means a person claiming relief (except interlocutory relief) under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not.

respondent means a person against whom interlocutory relief is claimed in a proceeding.

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1.6 References to rules

A reference in this schedule to a rule is a reference to a rule in this schedule.

1.7 Substantial compliance with forms

(1) It is sufficient compliance with this schedule in relation to a document that is required to be in accordance with an approved form if the document is substantially in accordance with the form or has only such variations as the nature of the case requires.

(2) Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in this schedule.

1.8 Court's power to give directions

The court may give directions in relation to the practice and procedure to be followed in a proceeding if satisfied, in the circumstances of the proceeding, that—

(a) the provisions of the Corporations Act, the ASIC Act, or the rules of the court do not adequately provide for the practice and procedure to be followed in the proceeding; or

(b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

1.9 Calculation of time

(1) If, for any purpose, this schedule—

(a) prohibits, permits or requires anything to be done within, by, or before the end of; or

(b) otherwise prescribes, allows or provides for;

a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event.

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(2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.

(3) If the last day of a period prescribed or allowed by these rules for anything to be done falls on a day that is not a business day where it is to be or may be done, it is to be or may be done on the first business day at the place after that day.

(4) In calculating a period of time for these rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

1.10 Extending and shortening of time

Unless the Corporations Act, the ASIC Act or this schedule otherwise provides, the rules of the court that provide for the extending or shortening of a period of time fixed for doing anything in relation to a proceeding apply to a proceeding to which this schedule applies.

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Part 6.2 Proceedings generally

2.1 Title of documents in a proceeding

A document for use in a proceeding, and for which there is an approved form, must be headed in the way set out in the form.

2.2 Originating process and interlocutory process

(1) Unless this schedule otherwise provides, a person must make an application required or permitted by the Corporations Act to be made to the court—

(a) if the application is not made in a proceeding already started in the court—by filing an originating process; and

(b) in any other case, and whether interlocutory relief or final relief is claimed—by filing an interlocutory process.

Note See

- approved form 2 (Originating process) AF2008-143
- approved form 3 (Interlocutory process) AF2008-144.

(2) Unless the court otherwise directs, a person may make an application to the court in relation to a proceeding in relation to which final relief has been granted by filing an interlocutory process in the proceeding.

(3) An originating process must state—

(a) each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought; and

(b) the relief sought.

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(4) An interlocutory process must state—

(a) if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of court under which the application is made; and

(b) the relief sought.

2.3 Setting of hearing

On receiving an originating process or interlocutory process, the registrar—

(a) must set a time, date and place for hearing and endorse those details on the originating process or interlocutory process; and

(b) may seal a sufficient number of copies for service and proof of service.

2.4 Supporting affidavits

(1) Unless the court otherwise directs, an originating or interlocutory process must be supported by an affidavit stating the facts in support of the process.

(2) An affidavit in support of an originating process must annex a record of a search of the records maintained by ASIC, in relation to the company that is the subject of the application to which the originating process relates, carried out no earlier than 7 days before the originating process is filed.

(3) This rule does not apply to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.

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2.4A Application for order setting aside statutory demand (Corporations Act, s 459G)

(1) This rule applies to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.

(2) The plaintiff may file a copy of the statutory demand, and a copy of any affidavit that accompanied the statutory demand, with the originating process seeking the order.

(3) The plaintiff must—

(a) carry out a search of the records maintained by ASIC in relation to the plaintiff not earlier than 7 days before the originating process is filed, and not later than the day before the hearing of the application; and

(b) either—

(i) annex the record of the search to the affidavit in support of the originating process; or

(ii) file the record of the search before, or tender it on, the hearing of the application.

2.5 Affidavits made by creditors

Subject to rule 5.4 (Affidavit in support of application for winding-up), an affidavit that is to be made by a creditor may be made—

(a) if the creditor is a corporation—by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or

(b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed—by that person; or

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(c) in any other case—by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

2.6 Form of affidavits

An affidavit must be in a form that complies with—

(a) the rules of the court; or

(b) the rules of the Supreme Court of the State or Territory (if any) where the affidavit was sworn or affirmed.

2.7 Service of originating process or interlocutory process and supporting affidavit

(1) As soon as practicable after filing an originating process and, in any case, at least 5 days before the date set for hearing, the plaintiff must serve a copy of the originating process and any supporting affidavit on—

(a) each defendant (if any) to the proceeding; and

(b) if the corporation to which the proceeding relates is not a party to the proceeding—the corporation.

(2) As soon as practicable after filing an interlocutory process and, in any case, at least 3 days before the date set for hearing, the applicant must serve a copy of the interlocutory process and any supporting affidavit on—

(a) each respondent (if any) to the application in the interlocutory process; and

(b) if the corporation to which the application in the interlocutory process relates is not a party to the application in the interlocutory process—the corporation.

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2.8 Notice of certain applications to be given to ASIC

(1) This rule has effect in addition to the requirements of the Corporations Act that, in relation to a proceeding, particular documents are to be served on ASIC or notice of particular matters is to be given to ASIC.

(2) This rule does not apply to a person making an application if the person is ASIC or a person authorised by ASIC.

(3) Unless the court otherwise orders, if a person makes an application under a provision of the Corporations Act mentioned in table 2.8, column 2, the person must serve on ASIC, a reasonable time before the hearing of the application, a copy of the originating or interlocutory process and supporting affidavit in relation to the application.

Table 2.8 Applications of which notice must be given to ASIC

column 1 item	column 2 provision	column 3 description of application
1	section 480	for the release of a liquidator of a company and the deregistration of the company
2	section 482 (1)	for the stay or termination of a winding-up
3	section 509 (6)	for the deregistration of a company
4	section 536 (1)	for an inquiry into the conduct of a liquidator
5	section 601AH (2)	to reinstate the registration of a company
6	section 601CC (8)	to restore the name of an Australian body to the register

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column 1 item	column 2 provision	column 3 description of application
7	section 601CL (9)	to restore the name of a foreign company to the register
8	chapter 6, 6A, 6B, 6C, 6D or 7	any application under these chapters
9	section 1317S (2) and (4)	for relief from liability for contravention of a civil penalty provision

2.9 Notice of appearance (Corporations Act, s 465C)

(1) A person who intends to appear before the court at the hearing of an application must, before appearing—

(a) file the following:

(i) a notice of appearance;

Note See approved form 4 (Notice of Appearance) AF2007-134.

(ii) if appropriate, an affidavit stating any facts on which the person intends to rely; and

(b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than—

(i) if the person is named in an originating process—3 days before the date set for hearing; or

(ii) if the person is named in an interlocutory process—1 day before the date set for hearing.

(2) If the person intends to appear before the court to oppose an application for winding up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by the Corporations Act, section 465C.

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(3) The period prescribed for filing and serving the notice and affidavit required by the Corporations Act, section 465C is the period mentioned in subrule (1) (b) (i).

Note Under the Corporations Act, s 465C, a person may not, without the leave of the court, oppose an application for winding-up unless, within the period prescribed by these rules (see r (3)), the person has filed, and served on the plaintiff, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

2.10 Intervention in proceeding by ASIC (Corporations Act, s 1330)

(1) If ASIC intends to intervene in a proceeding, ASIC must file a notice of intervention.

Note See approved form 5 (Notice of intervention by ASIC) AF2008-66.

(2) Not later than 3 days before the date set for the hearing at which ASIC intends to appear in the proceeding, ASIC must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

2.12 Proof of publication

(1) This rule applies in relation to any matter published in relation to a proceeding.

(2) Unless this schedule otherwise provides, or the court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file—

(a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is annexed or exhibited a copy of the published matter; or

(b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.

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(3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

2.13 Leave to creditor, contributory or officer to be heard

(1) The court may grant leave to any person who is, or claims to be—

(a) a creditor, contributory or officer of a corporation; or

(b) an officer of a creditor, or contributory, of a corporation; or

(c) any other interested person;

to be heard in a proceeding without becoming a party to the proceeding.

(2) If the court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, and that the costs should be borne by the person to whom leave was granted, the court may—

(a) direct that the person pay the costs; and

(b) order that the person not be heard further in the proceeding until the costs are paid or secured to the court's satisfaction.

(3) The court may order that a person who is, or claims to be, a creditor, contributory or officer of a corporation be added as a defendant to the proceeding.

(4) The court may grant leave to a person under subrule (1), or order that a person be added as a defendant to a proceeding under subrule (3)—

(a) on application by the person or a party to the proceeding; or

(b) on the court's own initiative.

(5) The court may—

(a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to

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any proceeding, before the court, at the expense of the corporation; and

(b) remove any person so appointed.

2.14 Inquiry in relation to corporation's debts etc

The court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

2.15 Meetings ordered by the court

Subject to the Corporations Act, this schedule and any direction of the court to the contrary, the Corporations Regulations, regulations 5.6.11 to 5.6.36A apply to meetings ordered by the court.

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Part 6.3 Compromises and arrangements in relation to Part 5.1 bodies

3.1 Application—pt 1.3

This part applies if an application is made to the court for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members.

3.2 Nomination of chairperson for meeting

Before the hearing of an application under the Corporations Act, section 411 (1), (1A) or (1B), the plaintiff must file an affidavit stating—

(a) the names of the people who have been nominated to be the chairperson and alternate chairperson of the meeting; and

(b) that each person nominated—

(i) is willing to act as chairperson; and

(ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and

(iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and

(c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and

(d) that the person does not fall within the Corporations Act, section 411 (7) (a) to (f), except as disclosed in the affidavit.

3.3 Order for meetings to identify proposed scheme

(1) An order under the Corporations Act, section 411 (1) or (1A) ordering a meeting or meetings in relation to a proposed compromise or

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arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.

(2) Unless the court otherwise orders, a meeting of members ordered under the Corporations Act, section 411 must be convened, held and conducted in accordance with—

(a) the provisions of the Corporations Act, part 2G.2 that apply to the members of a company; and

(b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with the Corporations Act, part 2G.2.

(3) Unless the court otherwise orders, a meeting of a class of holders of convertible securities ordered under the Corporations Act, section 411 must be convened, held and conducted as if—

(a) the holders were a separate class of members; and

(b) the meeting were a meeting of members convened, held and conducted under subrule (2).

(4) However, subrule (3) only applies to a meeting of a class of holders of convertible securities to the extent that the subrule is not inconsistent with the applicable provisions of the instrument under which the securities were issued.

3.4 Notice of hearing (Corporations Act, s 411 (4) and s 413 (1))

(1) This rule applies to—

(a) an application, under the Corporations Act, section 411 (4), for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and

(b) an application, under the Corporations Act, section 413 (1), for an order in relation to the reconstruction of a Part 5.1 body, or

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Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.

(2) Unless the court otherwise orders, the plaintiff must publish a notice of the hearing of the application—

(a) for an application in relation to 1 Part 5.1 body—in a daily newspaper circulating generally in the State or Territory where the Part 5.1 body has its principal, or last known, place of business; or

(b) for an application in relation to 2 or more Part 5.1 bodies—in a daily newspaper circulating generally in each State or Territory where any of the Part 5.1 bodies has its principal, or last known, place of business.

Note See approved form 6 (Notice of hearing to approve compromise or arrangement) AF2006-431.

(3) The notice must be published at least 5 days before the date set for the hearing of the application.

3.5 Copy of order approving compromise or arrangement to be lodged with ASIC

If the court makes an order under the Corporations Act, section 411 (1), (1A) or (4) or section 413 (1), the plaintiff must, as soon as practicable after the order is made—

(a) have the order sealed; and

(b) lodge an office copy of the order with ASIC; and

(c) serve an office copy of the order on anyone appointed to administer the compromise or arrangement.

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Part 6.4 Receivers and other controllers of corporation property (Corporations Act, pt 5.2)

4.1 Inquiry into conduct of controller (Corporations Act, s 423)

A complaint to the court under the Corporations Act, section 423 (1) (b) about an act or omission of a receiver, or a controller appointed by the court, must be made by an originating process seeking an inquiry in relation to the complaint.

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Part 6.5 Winding-up proceedings (including oppression proceedings where winding-up is sought)

5.1 Application—pt 6.5

This part applies to the following applications for the winding-up of a company:

(a) an application for an order under the Corporations Act, part 2F.1;

(b) an application under the Corporations Act, part 5.4 or part 5.4A.

5.2 Affidavit accompanying statutory demand (Corporations Act, s 459E (3))

For the Corporations Act, section 459E (3), the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

(a) be made by the creditor or by a person with the authority of the creditor or creditors; and

(b) not state a proceeding number, or refer to a court proceeding, in any heading or title to the affidavit.

Note See approved form 7 (Affidavit accompanying statutory demand) AF2006-432.

5.3 Application for leave to apply for winding-up in insolvency (Corporations Act, s 459P (2))

An application for leave to apply to the court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

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5.4 Affidavit in support of application for winding-up (Corporations Act, s 459P, s 462, s 464)

(1) The affidavit in support of an originating process seeking an order that a company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.

(2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must—

(a) verify service of the demand on the company; and

(b) verify the failure of the company to comply with the demand; and

(c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.

(3) If the application is made in reliance on the ground mentioned in the Corporations Act, section 461 (1) (a), the affidavit must—

(a) state whether the company is able to pay all its debts as and when they become due and payable; and

(b) refer to the company's most recent balance sheet and profit and loss statement as an annexure or exhibit to the affidavit, or explain their absence.

(4) The affidavit must be made within 7 days before the originating process is filed.

5.5 Consent of liquidator (Corporations Act, s 532 (9))

(1) For the Corporations Act, section 532 (9), an official liquidator must consent to act as liquidator of a company.

Note See approved form 8 (Consent of liquidator/provisional liquidator) AF2008-67.

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(2) In an application for an order that a company be wound up, the plaintiff must—

(a) before the hearing of the application, file the consent mentioned in subrule (1) of an official liquidator who would be entitled to be appointed as liquidator of the company; and

(b) serve a copy of the consent on the company at least 1 day before the hearing.

(3) In this rule:

liquidator does not include a provisional liquidator.

5.6 Notice of application for winding-up

(1) Unless the court otherwise orders, the plaintiff must publish a notice of the application for an order that a company be wound up.

Note See approved form 9 (Notice of application for winding-up order) AF2012-199.

(2) The notice must be published—

(a) at least 3 days after the originating process is served on the company; and

(b) at least 7 days before the date set for hearing of the application.

(3) If the notice is of an application for an order under the Corporations Act, part 2F.1, the notice must be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

Note A notice of an application for an order under the Corporations Act, pt 5.4 or pt 5.4A must be published in the prescribed manner—see the Corporations Act, s 465A and s 1367A.

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5.7 Applicant to make copies of documents available

A copy of any document filed in a proceeding to which this part applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

5.8 Discontinuance of application for winding-up

An application for an order that a company be wound up may not be discontinued except with the leave of the court.

5.9 Appearance before registrar

After filing an originating process seeking an order that a company be wound up, the plaintiff must, if required—

(a) appear before the registrar on a date to be appointed by the registrar; and

(b) satisfy the registrar that the plaintiff has complied with the Corporations Act and these rules in relation to applications for a winding-up order.

5.10 Order substituting plaintiff in application for winding-up (Corporations Act, s 465B)

(1) If the court makes an order under the Corporations Act, section 465B, the court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.

Note See approved form 10 (Notice of application for winding-up order by substituted plaintiff) AF2007-138.

(2) Unless the court otherwise directs, the notice must be published—

(a) at least 7 days before the date fixed for the hearing of the application; and

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(b) in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

5.11 Notice of winding-up order and appointment of liquidator

(1) This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.

(2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.

(3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

Note See approved form 11 (Notice of winding-up order and of appointment of liquidator) AF2007-139.

(4) In this rule:

liquidator does not include a provisional liquidator.

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Part 6.6 Provisional liquidators (Corporations Act, pt 5.4B)

6.1 Appointment of provisional liquidator (Corporations Act, s 472)

(1) An application for an official liquidator to be appointed, under the Corporations Act, section 472 (2), as a provisional liquidator of a company must be accompanied by the written consent of the official liquidator.

Note See approved form 8 (Consent of liquidator/provisional liquidator) AF2008-67.

(2) If—

(a) an order is made appointing a provisional liquidator; and

(b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the company's property;

the order must include a short description of the part of the company's property that the provisional liquidator may take into custody.

(3) The court may require the plaintiff to give an undertaking as to damages.

6.2 Notice of appointment of provisional liquidator

(1) This rule applies if the court orders that an official liquidator be appointed as a provisional liquidator of a company.

(2) Not later than the day after the order is made, the plaintiff must—

(a) except if the plaintiff is ASIC—lodge an office copy of the order with ASIC; and

(b) serve an office copy of the order on the company (except if the plaintiff is the company) and on anyone else as directed by the court; and

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(c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).

(3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

Note See approved form 12 (Notice of appointment of provisional liquidator) AF2007-140.

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Part 6.7 Liquidators

7.1 Resignation of liquidator (Corporations Act, s 473 (1))

(1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and give to ASIC, a memorandum of resignation.

(2) The resignation takes effect on the filing and giving of the memorandum.

7.2 Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)

(1) If, for any reason, there is no liquidator acting in a winding-up, the court may—

(a) for a winding-up by the court—appoint another official liquidator whose written consent has been filed; and

(b) for a voluntary winding-up—appoint another registered liquidator whose written consent has been filed.

(2) The court may make the appointment—

(a) in any case—on application by ASIC, a creditor or a contributory; or

(b) for a winding-up by the court—on its own initiative.

7.3 Report to liquidator as to company's affairs (Corporations Act, s 475)

(1) If a person is required under the Corporations Act, section 475 to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.

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(2) Except by order of the court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been—

(a) sanctioned by the liquidator before being incurred; or

(b) assessed.

(3) The liquidator must report to the court any default in complying with the requirements of the Corporations Act, section 475.

(4) In this rule:

liquidator includes a provisional liquidator.

7.4 Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)

If, in a winding-up by the court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, not later than 14 days after doing so, file the certificate and a copy of the list.

7.5 Release of liquidator and deregistration of company (Corporations Act, s 480 (c) and (d))

(1) This rule applies to an application by the liquidator of a company—

(a) for an order that the liquidator be released; or

(b) for an order that the liquidator be released and that ASIC deregister the company.

(2) The interlocutory process seeking the order must include—

(a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection not later than 21 days after the date of service of the interlocutory process; and

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(b) a statement setting out the terms of the Corporations Act, section 481 (3).

Note The Corporations Act, s 481 (3) provides that an order of the court releasing a liquidator discharges the liquidator from all liability in relation to any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

(3) The supporting affidavit must include details of the following matters:

(a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;

(b) any calls made on contributories in the course of the winding-up;

(c) any dividends paid in the course of the winding-up;

(d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;

(e) whether ASIC has appointed an auditor to report on an account or statement of the position in the winding-up under the Corporations Act, section 539 (2);

(f) whether the court has ordered a report on the accounts of the liquidator to be prepared;

(g) whether any objection to the release of the liquidator has been received by the liquidator from—

(i) an auditor appointed by ASIC or by the court; or

(ii) any creditor, contributory or other interested person;

(h) whether any report has been submitted by the liquidator to ASIC under the Corporations Act, section 533;

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(i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;

(j) any property disclaimed in the course of the winding-up;

(k) any remuneration paid or payable to the liquidator and how such remuneration was determined;

(l) any costs, charges or expenses payable by the liquidator if the court grants the liquidator's release;

(m) if the application is made under the Corporations Act, section 480 (c)—the facts and circumstances because of which it is submitted that the company should not be deregistered.

(4) The liquidator must include in the supporting affidavit the following statements, including, if appropriate, the words in brackets:

(a) 'To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit]';

(b) 'I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit]'.

(5) The liquidator must file with, or annex to, the supporting affidavit—

(a) a statement of the financial position of the company at the date when the interlocutory process seeking release was filed; and

(b) a summary of the liquidator's receipts and payments in winding up the company.

(6) Unless the court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding-up, and on each contributory, a copy of the interlocutory process accompanied by—

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(a) a copy of the summary of the liquidator's receipts and payments in winding up the company; and

(b) a copy of the statement of the financial position of the company at the date when the interlocutory process seeking release was filed.

7.6 Objection to release of liquidator

(1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory process seeking release—

(a) file—

(i) a notice of objection; and

Note See approved form 13 (Notice by creditor or contributory of objection to release of liquidator) AF2007-141.

(ii) if appropriate, an affidavit stating any facts relied on; and

(b) serve a copy of the notice and the affidavit (if any) on the liquidator.

(2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, not later than 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

7.7 Report on accounts of liquidator (Corporations Act, s 481)

(1) If the court orders that a report on the accounts of a liquidator be prepared under the Corporations Act, section 481 (1), the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.

(2) On completing the report, the auditor must—

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(a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words 'Auditor's report under section 481 (1) of the *Corporations Act 2001*'; and

(b) serve a copy of the report on the liquidator; and

(c) give a copy of the report to ASIC.

(3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or ASIC.

7.8 Application for payment of call (Corporations Act, s 483 (3) (b))

The affidavit in support of an application by the liquidator of a company, under the Corporations Act, section 483 (3) (b), for an order for the payment of a call must, if a form is approved under the *Court Procedures Act 2004*, section 8 for this rule, be in accordance with the approved form.

Note See approved form 14 (Affidavit in support of application for order for payment of call) AF2007-142.

7.9 Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488 (2))

(1) The affidavit in support of an application for special leave to distribute a surplus in relation to a company must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.

(2) At least 14 days before the date set for the hearing of the application, the liquidator must publish a notice of the application in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

Note See approved form 15 (Notice of application for leave to distribute a surplus) AF2007-143.

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7.10 Powers delegated to liquidator by the court (Corporations Act, s 488)

Subject to the Corporations Act, this schedule and any order of the court, the powers and duties given to the court by the Corporations Act, part 5.4B in relation to the matters mentioned in the Corporations Act, section 488 (1) may be exercised by a liquidator appointed by the court as an officer of the court and subject to the control of the court.

7.11 Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))

(1) A complaint to the court under the Corporations Act, section 536 (1) (b) must be made—

(a) for a winding-up by the court—by an interlocutory process seeking an inquiry; and

(b) for a voluntary winding-up—by an originating process seeking an inquiry.

(2) A report to the court by ASIC under the Corporations Act, section 536 (2) must be made—

(a) for a winding-up by the court—by filing—

(i) an interlocutory process seeking orders under the subsection; and

(ii) a written report in a sealed envelope that is marked with the title and number of the proceeding; and

(b) for a voluntary winding-up—by filing—

(i) an originating process seeking orders under the subsection; and

(ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.

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(3) The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.

(4) Except with the leave of the court, a report made under the Corporations Act, section 536 (2) is not available for inspection by anyone except the liquidator or ASIC.

(5) In this rule:

liquidator includes a provisional liquidator.

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Part 6.8 Special managers (Corporations Act, pt 5.4B)

8.1 Application for appointment of special manager (Corporations Act, s 484)

(1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers that, in the liquidator's opinion, should be entrusted by the court to the special manager.

(2) The supporting affidavit must state—

(a) the circumstances making it proper that a special manager be appointed; and

(b) details of the remuneration proposed to be paid to the special manager; and

(c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

8.2 Security given by special manager (Corporations Act, s 484)

(1) The court may, from time to time, direct that the amount of security given by a special manager be varied.

(2) Unless the court otherwise directs, the costs of providing the security given by a special manager in relation to a particular winding-up—

(a) are the personal expenses of the special manager; and

(b) must not be charged against the property of the company as an expense incurred in the winding-up.

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8.3 Special manager's receipts and payments (Corporations Act, s 484)

(1) A special manager must give to the liquidator—

(a) an account of the special manager's receipts and payments; and

(b) a statutory declaration verifying the account.

(2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

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Part 6.9 Remuneration of office-holders

9.1 Remuneration of receiver (Corporations Act, s 425 (1))

(1) This rule applies to an application by a receiver of property of a corporation for an order under the Corporations Act, section 425 (1) fixing the receiver's remuneration.

Note 1 Under the Corporations Act, s 425 (2) (b), the court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

Note 2 The amendment to the Corporations Act, s 425 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a receiver appointed on or after 31 December 2007—see Corporations Act, s 1480 (5).

(2) At least 21 days before filing an originating or interlocutory process seeking the order, the receiver must serve a notice of the receiver's intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following:

Note See approved form 16 (Notice of intention to apply for remuneration) AF2007-144.

(a) the person who appointed the receiver;

(b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);

(c) any administrator, liquidator or provisional liquidator of the corporation;

(d) any administrator of a deed of company arrangement executed by the corporation;

(e) if there is no-one of the kind mentioned in paragraph (c) or (d)—

(i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and

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(ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.

(3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or anyone mentioned in subrule (2) (c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.

(4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—

(a) the receiver may file an affidavit, made after the end of that period, in support of the originating or interlocutory process seeking the order stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and

(ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and

(b) the receiver may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and

(c) the application may be so dealt with.

(5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory, or other person, who has given a notice of objection.

(6) An affidavit in support of the originating process, or interlocutory process, seeking the order must—

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(a) include evidence of the matters mentioned in the Corporations Act, section 425 (8); and

(b) state the nature of the work performed or likely to be performed by the receiver; and

(c) state the amount of remuneration claimed; and

(d) include a summary of the receipts taken and payments made by the receiver; and

(e) state particulars of any objection of which the receiver has received notice; and

(f) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

9.2 Determination by court of remuneration of administrator (Corporations Act, s 449E (1) (c) and (1A) (c))

(1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under the Corporations Act, section 449E (1) (c) or (1A) (c) determining the administrator's remuneration.

(2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following people:

(a) each creditor who was present, in person or by proxy at any meeting of creditors;

(b) each member of any committee of creditors or committee of inspection;

(c) if there is no committee of creditors or committee of inspection, and no meeting of creditors has been convened and held, each

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of the 5 largest (measured by amount of debt) creditors of the company;

(d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

Note See approved form 16 (Notice of intention to apply for remuneration) AF2007-144.

(3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.

(4) If the administrator does not receive a notice of objection within the period mentioned in subrule (3)—

(a) the administrator may file an affidavit, made after the end of the period, in support of the originating process or interlocutory process, seeking the order stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and

(ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and

(b) the administrator may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and

(c) the application may be so dealt with.

(5) If the administrator receives a notice of objection within the period mentioned in subrule (3), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.

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(6) An affidavit in support of the originating process, or interlocutory process, seeking the order must—

(a) include evidence of the matters mentioned in the Corporations Act, section 449E (4); and

(b) state the nature of the work performed or likely to be performed by the administrator; and

(c) state the amount of remuneration claimed; and

(d) include a summary of the receipts taken and payments made by the administrator; and

(e) state particulars of any objection of which the administrator has received notice; and

(f) if the administration is continuing—give details of any matters delaying the completion of the administration.

9.2A Review of remuneration of administrator (Corporations Act, s 449E (2))

(1) This rule applies to an application for review of the amount of the remuneration of an administrator under the Corporations Act, section 449E (2).

Note The amendment to the Corporations Act, section 449E made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to an administrator appointed on or after 31 December 2007—see Corporations Act, s 1480 (6).

(2) The application may be made only after the remuneration has been determined under the Corporations Act, section 449E (1) (a) or (b) or (1A) (a) or (b).

(3) At least 21 days before filing the originating process or the interlocutory process applying for a review, the plaintiff or applicant must serve a notice of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following people:

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(a) if there is a committee of creditors or a committee of inspection—each member of the committee;

(b) if the remuneration of the administrator was determined by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined;

(c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

Note See approved form 16A (Notice of intention to apply for review of remuneration) AF2008-68.

(4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—

(a) stating the person's intention to appear at the hearing of the application for review; and

(b) setting out the issues that the person seeks to raise before the court.

(5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).

(6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served the notice.

(7) The administrator must file an affidavit stating the following matters:

(a) the matters mentioned in the Corporations Act, section 449E (4);

(b) the nature of the work performed or likely to be performed by the administrator;

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(c) the amount of remuneration claimed by the administrator if that amount is different from the amount of remuneration that has been determined;

(d) a summary of the receipts taken and payments made by the administrator;

(e) particulars of any objection to the remuneration as determined, of which the administrator has received notice;

(f) if the administration is continuing — details of any matters delaying the completion of the administration.

(8) The affidavit mentioned in subrule (7) must annex a copy of the report that the administrator was required to prepare before remuneration was determined.

(9) The plaintiff or applicant must—

(a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and

(b) annex or exhibit to the affidavit a copy of the notice or notices.

9.3 Remuneration of provisional liquidator (Corporations Act, s 473 (2))

(1) This rule applies to an application by a provisional liquidator of a company for an order under the Corporations Act, section 473 (2) determining the provisional liquidator's remuneration.

(2) The application must be made by interlocutory process in the winding-up proceeding.

(3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following:

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Note See approved form 16 (Notice of intention to apply for remuneration) AF2007-144.

(a) any liquidator (except the provisional liquidator) of the company;

(b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;

(c) each member of the company whose shareholding represents at least 10 % of the issued capital of the company.

(4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

(5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—

(a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

(i) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and

(b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and

(c) the application may be so dealt with.

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(6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the order—

(a) on each creditor or contributory who has given a notice of objection; and

(b) on the liquidator (if any).

(7) An affidavit in support of the interlocutory process seeking the order must—

(a) state the nature of the work performed or likely to be performed by the provisional liquidator; and

(b) state the amount of remuneration claimed; and

(c) include a summary of the receipts taken and payments made by the provisional liquidator; and

(d) state particulars of any objection of which the provisional liquidator has received notice; and

(e) if the winding-up proceeding has not been completed—give details of—

(i) any reasons known to the provisional liquidator why the winding-up proceeding has not been completed; and

(ii) any reasons why the provisional liquidator's remuneration should be determined before the completion of the winding-up proceeding.

(8) The affidavit must also provide evidence of the matters mentioned in the Corporations Act, section 473 (10)—

(a) to the extent that they may be relevant to a provisional liquidator; and

(b) as if a reference in that subsection to ***liquidator*** were a reference to ***provisional liquidator***.

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9.4 Determination by court of liquidator's remuneration (Corporations Act, s 473 (3) (b) (ii))

(1) This rule applies to an application by a liquidator of a company for an order under the Corporations Act, section 473 (3) (b) (ii) determining the liquidator's remuneration.

Note The amendment to the Corporations Act, s 473 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, s 1480 (7).

(2) The application—

(a) must be made by interlocutory process in the winding-up proceeding; and

(b) must not be made until after the date of the meeting of creditors mentioned in the Corporations Act, section 473 (4).

(3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice of the liquidator's intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following:

Note See approved form 16 (Notice of intention to apply for remuneration) AF2007-144.

(a) each creditor who was present, in person or by proxy, at any meeting of creditors at which the remuneration of the liquidator was considered;

(b) each member of any committee of inspection;

(c) if there is no committee of inspection, and no meeting of creditors has been convened and held—each of the 5 largest (measured by amount of debt) creditors of the company;

(d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

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(4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

(5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—

(a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

(ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and

(b) the liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and

(c) the application may be so dealt with.

(6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.

(7) An affidavit in support of the interlocutory process seeking the order must—

(a) include evidence of the matters mentioned in the Corporations Act, section 473 (10); and

(b) state the nature of the work performed or likely to be performed by the liquidator; and

(c) state the amount of remuneration claimed; and

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(d) include a summary of the receipts taken and payments made by the liquidator; and

(e) state particulars of any objection of which the liquidator has received notice; and

(f) if the winding up is continuing—give details of any matters delaying the completion of the winding up.

9.4A Review of remuneration of liquidator (Corporations Act, s 473 (5) and (6) and s 504 (1))

(1) This rule applies to an application for review of the amount of the remuneration of a liquidator under the Corporations Act, section 473 (5) or (6) or section 504 (1).

Note The amendment to the Corporations Act, s 504 made by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth) applies in relation to a liquidator appointed on or after 31 December 2007—see the Corporations Act, s 1480 (7).

(2) The application may only be made after remuneration has been determined under the Corporations Act, section 473 (3) (a) or (b) (i), or fixed under section 495 (1) or section 499 (3).

(3) At least 21 days before filing the originating process or interlocutory process applying for a review, the plaintiff or applicant must serve a notice of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following people:

(a) if there is a committee of inspection—each member of the committee;

(b) if the remuneration of the liquidator was determined or fixed by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined or fixed;

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(c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

Note See approved form 16A (Notice of intention to apply for review of remuneration) AF2008-68.

(4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—

(a) stating the person's intention to appear at the hearing of the application for review; and

(b) setting out the issues that the person seeks to raise before the court.

(5) A person mentioned subrule (3) is entitled to be heard on the application for review, but only (unless the court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).

(6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served the notice.

(7) The liquidator must file an affidavit stating the following matters:

(a) for an application under the Corporations Act, section 473 (5) or (6)—the matters mentioned in the Corporations Act, section 473 (10);

(b) for an application under the Corporations Act, section 504 (1)—the matters mentioned in the Corporations Act, section 504 (2);

(c) the nature of the work performed or likely to be performed by the liquidator;

(d) the amount of remuneration claimed by the liquidator if that amount is different from the amount of remuneration that has been determined or fixed;

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(e) a summary of the receipts taken and payments made by the liquidator;

(f) particulars of any objection to the remuneration as determined or fixed of which the liquidator has received notice;

(g) if the winding up is continuing—details of any matters delaying the completion of the winding up.

(8) The affidavit under subrule (7) must annex a copy of the report that the liquidator was required to prepare before remuneration was determined or fixed.

Note For the requirement to prepare a report, see the Corporations Act, s 473 (11) and (12), s 495 (5), s 499 (6) and (7).

(9) The plaintiff or applicant must—

(a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and

(b) annex or exhibit to the affidavit a copy of the notice or notices.

9.5 Remuneration of special manager (Corporations Act, s 484 (2))

(1) This rule applies to an application by a special manager of the property or business of a company for an order under the Corporations Act, section 484 (2) fixing the special manager's remuneration.

(2) The application must be made by interlocutory process in the winding-up proceeding.

(3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice of the special manager's intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following:

Note See approved form 16 (Notice of intention to apply for remuneration) AF2007-144.

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(a) the liquidator of the company;

(b) each member of any committee of creditors or committee of inspection or, if there is no committee of creditors or committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;

(c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

(4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.

(5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—

(a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

(ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and

(b) the special manager may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and

(c) the application may be so dealt with.

(6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory process seeking the order—

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(a) on each creditor or contributory who has given a notice of objection; and

(b) on the liquidator.

(7) The affidavit in support of the interlocutory process seeking the order must—

(a) state the nature of the work performed or likely to be performed by the special manager; and

(b) state the amount of remuneration claimed; and

(c) include a summary of the receipts taken and payments made by the special manager; and

(d) state particulars of any objection of which the special manager has received notice; and

(e) if the special management is continuing—give details of any matters delaying the completion of the special management.

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Part 6.10 Winding-up generally

10.1 Determination of value of debts or claims (Corporations Act, s 554A (2))

A reference to the court by a liquidator of a company under the Corporations Act, section 554A (2) (b) must be made—

(a) for a winding-up by the court—by filing an interlocutory process seeking an order estimating, or determining a method for working out, the value of the debt or claim; and

(b) for a voluntary winding-up—by filing an originating process seeking an order estimating, or determining a method for working out, the value of the debt or claim.

10.2 Disclaimer of contract (Corporations Act, s 568 (1A))

(1) The affidavit in support of an application by a liquidator, under the Corporations Act, section 568 (1A), for leave to disclaim a contract in relation to a company must—

(a) state the people interested, and their interests, under the contract; and

(b) state the facts on which it is submitted that the contract should be disclaimed.

(2) The liquidator must serve the affidavit on each party to the contract (except the company) and on anyone interested in the contract.

10.3 Winding-up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act, s 601ND)

These rules apply, with any necessary changes, and in the same way as they apply to a company, in relation to the winding-up of a Part 5.7 body or a registered scheme.

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Part 6.11 Examinations and orders (Corporations Act, pt 5.9, div 1 and div 2)

11.1 Meaning of *examination summons* in pt 6.11

In this part:

examination summons means a summons under the Corporations Act, section 596A or section 596B for the examination of a person about a corporation's examinable affairs.

11.2 Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)

(1) An application for an order for the examination or investigation of a person under the Corporations Act, section 411 (9) (b), section 423 or section 536 (3) may be made by—

(a) ASIC; or

(b) a person authorised by ASIC; or

(c) a creditor or contributory; or

(d) anyone else aggrieved by the conduct of—

(i) a person appointed to administer a compromise or arrangement; or

(ii) a controller; or

(iii) a liquidator or provisional liquidator.

(2) The application may be made without notice to anyone.

(3) The provisions of this part that apply to an examination under the Corporations Act, part 5.9, division 1 apply, with any necessary changes, to an examination or an investigation under the Corporations Act, section 411 (9) (b), section 423 or section 536 (3).

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11.3 Application for examination summons (Corporations Act, s 596A, s 596B)

(1) An application for the issue of an examination summons must be made by filing an interlocutory or originating process.

(2) The application may be made without notice to anyone.

(3) The originating or interlocutory process seeking the issue of the examination summons must be—

(a) supported by an affidavit stating the facts in support of the process; and

(b) accompanied by a draft examination summons.

Note See approved form 17 (Summons for examination) AF2007-145.

(4) The originating or interlocutory process and supporting affidavit must be filed in a sealed envelope marked, as appropriate—

(a) 'Application and supporting affidavit for issue of summons for examination under section 596A of the *Corporations Act 2001*'; or

(b) 'Application and supporting affidavit for issue of summons for examination under section 596B of the *Corporations Act 2001*'.

(5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating or interlocutory process and the supporting affidavit.

(6) If the application is not made by ASIC, ASIC must be given notice of the application and, if required by ASIC, served with a copy of the originating or interlocutory process and the supporting affidavit.

(7) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by anyone.

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11.4 Service of examination summons

An examination summons issued by the court must be personally served, or served in any way that as the court may direct, on the person who is to be examined at least 8 days before the date set for the examination.

11.5 Discharge of examination summons

(1) This rule applies if a person is served with an examination summons.

(2) Not later than 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—

(a) an interlocutory process seeking an order discharging the summons; and

(b) an affidavit stating the facts in support of the interlocutory process.

(3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on—

(a) the person who applied for the examination; and

(b) unless that person is ASIC or a person authorised by ASIC, ASIC.

11.6 Filing of record of examination (Corporations Act, s 597 (13))

If the court makes an order in relation to an examination under the Corporations Act, section 597 (13), the court may give directions for the filing of the written record of the examination.

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11.7 Authentication of transcript of examination (Corporations Act, s 597 (14))

For the Corporations Act, section 597 (14), a transcript of an examination may be authenticated—

(a) by the person, or people, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or people, that the record is a true transcript of the record of examination; or

(b) by anyone present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

11.8 Inspection of record or transcript of examination or investigation under Corporations Act, s 411, s 423 or s 536

(1) A written record or transcript of an examination or investigation under the Corporations Act, section 411, section 423 or section 536 is not available for inspection by anyone except—

(a) with the consent of the liquidator (if any) or ASIC; or

(b) by leave of the court.

(2) This rule does not apply to the liquidator, ASIC or anyone authorised by ASIC.

11.9 Entitlement to record or transcript of examination held in public

(1) This rule applies if—

(a) an examination under the Corporations Act, section 597 is held completely or partly in public; and

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(b) a written record or transcript of the examination is filed in the court.

(2) The person examined may apply to the registrar, not later than 3 years after the completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.

(3) On receiving an application from a person under subrule (2), and any applicable fee, the registrar must give a copy of the record or transcript to the person.

11.10 Default in relation to examination

(1) This rule applies if a person is summoned or ordered by the court to attend for examination, and—

(a) without reasonable cause, the person—

(i) fails to attend at the time and place appointed; or

(ii) fails to attend from day-to-day until the completion of the examination; or

(iii) fails to take an oath or make an affirmation; or

(iv) fails to answer a question that the court directs the person to answer; or

(v) fails to produce books that the summons requires the person to produce; or

(vi) fails to comply with a requirement by the court to sign a written record of the examination; or

(b) before the day set for the examination, the person who applied for the summons or order satisfies the court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.

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(2) The court may—

(a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and

(b) make any other orders that the court considers just or necessary.

11.11 Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act, s 598)

(1) This rule applies to a person applying for an order under the Corporations Act, section 598.

(2) In addition to complying with rule 2.7 (Service of originating process or interlocutory process and supporting affidavit) and rule 2.8 (Notice of certain applications to be given to ASIC), the person must serve a copy of the originating or interlocutory process and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

Note Under r 2.7, a plaintiff must serve a copy of the originating process, and any supporting affidavit, on a defendant to the proceeding and, if necessary, on the corporation to which the proceeding relates; and an applicant must serve a copy of an interlocutory process, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on ASIC (see r 2.8).

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Part 6.11A Warrants (Corporations Act, s 486B and pt 5.4B, div 3, subdiv B)

11A.1 Arrest of person (Corporations Act, s 486B)

(1) An application for the issue of a warrant under the Corporations Act, section 486B (1) for the arrest of a person must state the grounds for the issue of the warrant.

(2) The application must be accompanied by an affidavit stating the facts in support of the application.

Note See approved form 17A (Arrest warrant) AF2008-69.

(3) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a registrar in the registry from which the warrant was issued.

Note The Corporations Act, ss 489A to 489E, inserted by the *Corporations Amendment (Insolvency) Act 2007* (Cwlth), apply in relation to a warrant issued on or after 31 December 2007—see the Corporations Act, s 1481 (3).

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Part 6.12 Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C, 6D and 7) and securities (Corporations Act, ch 7)

12.1 Service on ASIC in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7

If ASIC is not a party to an application made under the Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7, the plaintiff must serve a copy of the originating process and the supporting affidavit on ASIC as soon as practicable after filing the originating process.

12.1A Reference to court of question of law arising in proceeding before Takeovers Panel (Corporations Act, s 659A)

The procedures in the *Federal Court Rules 2011* (Cwlth), part 38 (Cases stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the court under the Corporations Act, section 659A.

12.1B Notification to court if proceeding started before end of takeover bid period (Corporations Act, s 659B)

(1) This rule applies to a party to a proceeding who suspects or becomes aware that—

(a) the proceeding was started in relation to a takeover bid, or proposed takeover bid, before the end of the bid period; and

(b) the proceeding falls within the definition of ***court proceedings in relation to a takeover bid or proposed takeover bid*** in the Corporations Act, section 659B (4).

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(2) The party identified in subrule (1) must, immediately on suspecting or becoming aware of the matters mentioned in subrule (1), notify any other party to the proceeding and the court of the suspicion or knowledge.

(3) The party must comply with subrule (2), unless any other party to the proceeding has given a notice under this rule to the party.

12.2 Application for summons for appearance of person (Corporations Act, s 1071D (4))

(1) An application for the issue of a summons under the Corporations Act, section 1071D (4) must be made by filing an originating or interlocutory process.

(2) The applicant may be the only party to the application.

(3) The originating or interlocutory process seeking the issue of the summons must be—

(a) supported by an affidavit stating the facts in support of the process; and

(b) accompanied by a draft summons.

Note See approved form 18 (Summons for appearance in relation to registration of transfer of interests) AF2007-146.

12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)

As soon as practicable after filing an originating process under the Corporations Act, section 1071F, the plaintiff must serve a copy of the originating process and the supporting affidavit on—

(a) the company; and

(b) anyone against whom an order is sought.

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Part 6.13 .

Note These rules do not include a pt 6.13.

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Part 6.14 Powers of courts (Corporations Act, pt 9.5)

14.1 Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act, s 554A, s 1321)

(1) All appeals to the court authorised by the Corporations Act must be started by an originating or interlocutory process that states—

(a) the act, omission or decision complained of; and

(b) for an appeal against a decision—whether all or part only of the decision is complained of and, if part only, which part of the decision is complained of; and

(c) the grounds on which the complaint is based.

(2) Unless the Corporations Act otherwise provides, the originating or interlocutory process must be filed within—

(a) 21 days after the date of the act, omission or decision appealed against; or

(b) any further time allowed by the court.

(3) The court may extend the time for filing the originating or interlocutory process either before or after the time for filing ends and whether or not the application for extension is made before the time ends.

(4) As soon as practicable after filing the originating or interlocutory process and, in any case, at least 5 days before the date set for hearing, the appellant must serve a copy of the process, and any supporting affidavit, on each person directly affected by the appeal.

(5) As soon as practicable after being served with a copy of the originating or interlocutory process and any supporting affidavit, a

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person whose act, omission or decision is being appealed against must file an affidavit—

(a) stating the basis on which the act, omission or decision was done or made; and

(b) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the appellant.

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Part 6.15 Proceedings under ASIC Act

15.1 Reference to court of question of law arising at hearing of ASIC (ASIC Act, s 61)

The procedures in the *Federal Court Rules 2011* (Cwlth), part 38 (Cases stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising at a hearing by ASIC to the court under the ASIC Act, section 61.

15.2 .

Note These rules do not include a r 15.2.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

15.3 Application for inquiry (ASIC Act, s 70, s 201, s 219)

An application for an inquiry under the ASIC Act, section 70 (3), section 201 (3) or section 219 (7) must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

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Part 6.15A Proceedings under the Cross-Border Insolvency Act

Division 6.15A.1 Introduction

15A.1 Application—pt 6.15A and other rules

Unless the court otherwise orders—

(a) this part applies to a proceeding in the court, under the Cross-Border Insolvency Act, involving a debtor other than an individual; and

(b) the rules (other than this part) apply to a proceeding in the court under the Cross-Border Insolvency Act if they are relevant and not inconsistent with this part.

Note ***Cross-Border Insolvency Act***—see r 1.5.

15A.2 Terms used in Cross-Border Insolvency Act

(1) Unless the contrary intention appears, a term that is used in this part and in the Cross-Border Insolvency Act, whether or not a particular meaning is given to the term by the Cross-Border Insolvency Act, has the same meaning in this part as it has in the Cross-Border Insolvency Act.

Note 1 The following terms used in this part (including in the notes to this part) are defined in the Model Law as having the following meanings:

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding.

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.

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foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article.

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.

foreign representative means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

Note 2 ***Model Law***—see r 1.5.

(2) This part is to be interpreted in a way that gives effect to the Cross-Border Insolvency Act.

(3) In this part:

concurrent proceedings—see rule 15A.10 (1) (a).

coordination agreement means an agreement governing a form of cooperation mentioned in rule 15A.10 (1).

foreign party participation—see rule 15A.10 (1) (c).

Global Guidelines means the Global Guidelines for Court-to-Court Communications in International Insolvency Cases published by the American Law Institute and the International Insolvency Institute, as in force from time to time.

Global Principles means the Global Principles for cooperation in International Insolvency Cases published by the American Law Institute and the International Insolvency Institute, as in force from time to time.

local proceeding means a proceeding under the Corporations Act, chapter 5 (other than part 5.2 and part 5.4A) or section 601CL.

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service list means a service list established under the Global Guidelines, guideline 13.

(4) The Legislation Act, section 47 (3) and (6) do not apply to the Global Guidelines and the Global Principles.

Note 1 The Global Guidelines and the Global Principles do not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

Note 2 The Global Guidelines are accessible at https://www.insol.org/.

Note 3 The Global Principles are accessible at https://www.iiiglobal.org/sites/default/files/alireportmarch_0.pdf.

Division 6.15A.2 Recognition of a foreign proceeding

15A.3 Application for recognition

(1) An application by a foreign representative for recognition of a foreign proceeding under the Model Law, article 15 must be made by filing an originating process.

Note See approved form 2 (Originating process) AF2008-143.

(2) The originating process must—

(a) be accompanied by the statements mentioned in the Model Law, article 15 and the Cross-Border Insolvency Act, section 13; and

(b) name the foreign representative as the plaintiff and the debtor as the defendant; and

(c) be accompanied by an affidavit verifying the matters mentioned in the Model Law, article 15, paragraphs 2 and 3 and the Cross-Border Insolvency Act, section 13.

(3) When filing the originating process, the foreign representative must file, but need not serve, an interlocutory process seeking directions as to service, and the court may give any directions about service, and make any incidental orders, that it considers just.

Note See approved form 3 (Interlocutory process) AF2008-144.

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(4) The plaintiff must serve a copy of the originating process and the other documents mentioned in subrule (2)—

(a) unless the court otherwise orders, in accordance with subrule 2.7 (1); and

(b) on any other people the court may direct at the hearing of the interlocutory process.

(5) A person who intends to appear before the court at the hearing of an application for recognition must file and serve the documents mentioned in rule 2.9.

15A.4 Application for provisional relief under Model Law, art 19

(1) Any application by the plaintiff for provisional relief under the Model Law, article 19 must be made by filing an interlocutory process.

Note See approved form 3 (Interlocutory process) AF2008-144.

(2) Unless the court otherwise orders, the interlocutory process and any supporting affidavit must be served in accordance with subrule 2.7 (2).

15A.5 Liquidator's consent to act

If an application is made for an order—

(a) under the Model Law, article 19 or 21 to entrust the administration or realisation of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative); or

(b) under article 21 to entrust the distribution of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative);

then, unless the Court otherwise orders, the person must—

(c) be eligible to be appointed by the court as a liquidator under the Corporations Act, section 472; and

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(d) have filed a Consent to Act that states an address for service for the person within Australia.

Note See approved form 19 (Consent to act as designated person) AF2010-149.

15A.6 Notice of filing application for recognition

(1) Unless the court otherwise orders, the plaintiff in a proceeding mentioned in rule 15A.3 must—

(a) send a notice of filing the application to each person whose claim to be a creditor of the defendant is known to the plaintiff; and

(b) publish a notice of filing the application for recognition of a foreign proceeding in a daily newspaper circulating generally in the State or Territory of the defendant's principal, or last known, place of business.

Note See approved form 20 (Notice of filing of application for recognition of foreign proceeding) AF2008-149.

(2) The court may direct the plaintiff to publish the notice in a daily newspaper circulating generally in any State or Territory not described in subrule (1) (b).

15A.7 Notice of order for recognition, withdrawal etc

(1) If the court makes an order for recognition of a foreign proceeding under the Model Law, article 17 or makes any order under the Model Law, article 19 or 21, the plaintiff must, as soon as practicable after the order is made, do all of the following:

(a) have the order entered;

(b) serve a copy of the entered order on the defendant;

(c) send a notice of the making of the order to each person whose claim to be a creditor of the defendant is known to the plaintiff;

Note See approved form 21 (Notice of making of order under the Cross-Border Insolvency Act 2008) AF2008-150.

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(d) publish the notice of the making of the order in a daily newspaper circulating generally in the State or Territory of the defendant's principal, or last known, place of business.

(2) The court may direct the plaintiff to publish the notice in a daily newspaper circulating generally in any state or territory not described in subrule (1) (d).

(3) If the application for recognition is dismissed or withdrawn, the plaintiff must, as soon as practicable, do all of the following:

(a) for a dismissal—have the order of dismissal entered;

(b) serve a copy of the entered order of dismissal, or notice of the withdrawal, on the defendant;

(c) send a notice of the dismissal or withdrawal to each person whose claim to be a creditor of the defendant is known to the plaintiff;

Note See approved form 22 (Notice of dismissal or withdrawal of application for recognition of foreign proceeding) AF2008-151.

(d) publish the notice of the dismissal or withdrawal in a daily newspaper circulating generally in the State or Territory of the defendant's principal, or last known, place of business.

(4) The court may direct the plaintiff to publish the notice of the dismissal or withdrawal in a daily newspaper circulating generally in any State or Territory not described in subrule (3) (d).

15A.8 Relief after recognition

(1) If the court has made an order for recognition of a foreign proceeding, any application by the plaintiff for relief under the Model Law, article 21, paragraph 1 must be made by filing an interlocutory process, and any supporting affidavit.

Note See approved form 3 (Interlocutory process) AF2008-144.

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(2) Unless the court otherwise orders, an interlocutory process under subrule (1) and any supporting affidavit must be served in accordance with rule 2.7 (2) but on the following people:

(a) the defendant;

(b) any person that the court directed be served with the originating process by which the application for recognition was made;

(c) any other person that the court directs.

(3) A person who intends to appear before the court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

15A.9 Application to modify or terminate order for recognition or other relief

(1) This rule applies to—

(a) an application under the Model Law, article 17, paragraph 4 for an order modifying or terminating an order for recognition of a foreign proceeding; and

(b) an application under the Model Law, article 22, paragraph 3 for an order modifying or terminating relief granted under the Model Law, article 19 or 21.

(2) An application mentioned in subrule (1) must be made by filing an interlocutory process.

Note See approved form 3 (Interlocutory process) AF2008-144.

(3) An interlocutory process for an application under subrule (1) and any supporting affidavit must be served on—

(a) for an application under subrule (1) (a)—the defendant and any other people who were served with, or filed a notice of appearance in relation to, the application for recognition; and

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(b) for an application under subrule (1) (b)—the defendant and any other people who were served with, or filed a notice of appearance in relation to, the application for relief under the Model Law, article 19 or 21.

(4) Unless the court otherwise orders, a plaintiff who applies for an order under subrule (1) must—

(a) send a notice of filing the application to each person whose claim to be a creditor of the defendant is known to the plaintiff; and

Note See approved form 23 (Notice of filing of application to modify or terminate an order for recognition or other relief) AF2008-152.

(b) publish the notice of filing the application in a daily newspaper circulating generally in the State or Territory of the defendant's principal, or last known, place of business.

(5) The court may direct the applicant to publish the notice of filing the application in a daily newspaper circulating generally in any State or Territory not described in subrule (4) (b).

(6) A person who intends to appear before the court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

Division 6.15A.3 Cooperation with foreign courts and representatives

15A.10 Cooperation involving court to be under coordination agreement

(1) This rule applies if—

(a) a foreign proceeding and a local proceeding in relation to the same debtor are taking place concurrently within the meaning of the Model Law, article 1 (c) (***concurrent proceedings***); or

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(b) assistance is sought in Australia by a foreign court or foreign representative in relation to a foreign proceeding or is sought in a foreign state in relation to a local proceeding in relation to a debtor within the meaning of the Model Law, article 1 (a) and article 1 (b) (***cross-border assistance***); or

(c) creditors or other interested people in a foreign state have an interest in requesting the commencement of participation in a local proceeding in relation to a debtor within the meaning of the Model Law, article 1 (d) (***foreign party participation***).

(2) Subject to subrule (5), coordination of concurrent proceedings under the Model Law, article 27 (e) is to take place under a coordination agreement approved by the court under rule 15A.11.

(3) Subject to subrule (5), coordination of the administration and supervision of a debtor's assets and affairs under the Model Law, article 27 (c) that involves the court is to take place under a coordination agreement approved by the court under rule 15A.11.

(4) Subject to subrule (5), any other form of cooperation under the Model Law, article 27 that involves the court is to take place under a coordination agreement approved by the court under rule 15A.11.

(5) The court may, on application by a party or on its own motion, order that a form of cooperation under subrule (2), (3) or (4) is to proceed other than under a coordination agreement approved by the court under rule 15A.11.

(6) An application by a party under subrule (5)—

(a) subject to paragraph (b), must be made by originating process; and

(b) may, if a proceeding has been started in the court in relation to the debtor under these rules, be made by interlocutory process in that proceeding; and

(c) must be supported by an affidavit identifying the form and substance of cooperation sought, the grounds for seeking it and

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the provisions of the Global Guidelines that the party proposes apply to the cooperation.

(7) If the court makes an order under subrule (5), the court must determine which provisions of the Global Guidelines apply to the cooperation.

15A.11 Application for approval of coordination agreement

(1) A coordination agreement that involves the court is subject to the approval of the court.

(2) An application under subrule (1)—

(a) subject to paragraph (b), must be made by originating process; and

(b) may, if a proceeding has been started in the court in relation to a debtor under these rules, be made by interlocutory process in the proceeding.

(3) An application under subrule (1) must be supported by an affidavit—

(a) exhibiting the coordination agreement; and

(b) identifying the manner in which the agreement involves the court; and

(c) identifying all relevant foreign proceedings; and

(d) identifying and providing contact details for all relevant foreign courts; and

(e) identifying all relevant foreign representatives; and

(f) identifying any local liquidator or controller appointed in relation to the debtor's local property.

(4) When filing the application, the applicant must file, but need not serve, an interlocutory process seeking directions as to service, and the court may give any directions about service, and make any incidental orders, which it considers just.

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(5) The applicant must serve a copy of the application and supporting affidavit—

(a) unless the court otherwise orders, on the parties to the proceeding under rule 2.7 (1); and

(b) on any other people the court may direct at the hearing of the interlocutory process.

(6) A person who intends to appear before the court at the hearing of the application must file and serve the documents mentioned in rule 2.9.

15A.12 Appointment of independent intermediary

(1) This rule applies if the court has made or is contemplating making an order under rule 15A.10 (Cooperation involving court to be under coordination agreement) or has approved or is contemplating approving a coordination agreement under rule 15A.11.

(2) The court may, on application by a party or on its own motion, order that an independent intermediary under Global Principle 23, be appointed to carry out any tasks in accordance with the conditions (if any) the court states.

(3) An application by the party under subrule (2) must be accompanied by an affidavit identifying the following matters:

(a) the proposed independent intermediary;

(b) the qualifications of the intermediary by reference to Global Principle 23 (5);

(c) the grounds for appointment of the intermediary;

(d) the tasks proposed to be performed by the intermediary;

(e) the proposed remuneration of the intermediary.

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Division 6.15A.4 Concurrent proceedings

15A.13 Starting proceeding after recognition of a foreign main proceeding

(1) This rule applies if a foreign main proceeding in relation to a debtor has been recognised under division 6.15A.2 (Recognition of a foreign proceeding) of the rules or of corresponding rules in the Federal Court of Australia or Supreme Court of a State or Territory of Australia.

(2) A party who wishes to start a local proceeding in relation to the debtor or the debtor's assets which is governed by the Model Law, article 28 must file with the originating process an affidavit—

(a) exhibiting the order recognising the foreign main proceeding; and

(b) identifying the assets of the debtor in Australia; and

(c) identifying any other assets of the debtor that under the law of the Commonwealth should be administered in the local proceeding.

Division 6.15A.5 General

15A.14 Proof of orders or documents of foreign courts

(1) This rule applies if an apparently authentic order or document of a foreign court is received by the court directly from the foreign court by physical or electronic delivery under provisions governing the transmission of the documents contained in—

(a) an order under rule 15A.10 (Cooperation involving court to be under coordination agreement); or

(b) a coordination agreement approved by the court under rule 15A.11 (Application for approval of coordination agreement).

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(2) Unless the court otherwise orders, the order or document of the foreign court is presumed to be authentic in the absence of evidence to the contrary.

15A.15 Service in accordance with service list

(1) This rule applies if—

(a) a service list has been agreed under a coordination agreement approved by the court under rule 15A.11; or

(b) a service list has been established under an order by the court under rule 15A.10.

(2) Unless the court otherwise orders, the following applications must be served on all people named in the service list to which this rule applies that is applicable to the application:

(a) an application for recognition under rule 15A.3;

(b) an application to modify or terminate an order for recognition under rule 15A.9;

(c) an application for relief after recognition under rule 15A.8.

(3) If any application not governed by subrule (2) is made, the court may direct that the application be served on some or all people named in the service list to which this rule applies that is applicable to the application.

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Part 6.16 .

Note This part of the uniform corporations rules has not been included.

These rules deal with the powers of the court that may be exercised by the associate judge or registrar of the court (see pt 6.4 (Associate judge) and pt 6.5 (Registrar) and sch 5 (Jurisdiction of registrar)).

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Dictionary

(see r 7)

Note 1 The Legislation Act contains definitions and other provisions relevant to these rules.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- adult
- asset
- bank holiday
- business day
- child
- corporation
- Corporations Act
- correctional centre
- domestic partner
- entity
- external territory
- fail
- foreign country
- home address
- instrument (see s 14)
- NSW correctional institution
- person
- position
- property
- public holiday
- public servant
- solicitor
- territory law.

account, for a financial institution, for part 2.18 (Enforcement)—see rule 2000.

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accounting party, for division 2.20.2 (Taking accounts)—see rule 2720.

accused person—

(a) for division 4.1.2 (Criminal proceedings—service)—see rule 4005; and

(b) for part 4.3 (Supreme Court criminal proceedings)—see rule 4700; and

(c) for division 4.3.3 (Supreme court criminal proceedings—bail)—see rule 4720.

active party, to a proceeding, means a party who has an address for service in the proceeding, other than a party—

(a) either—

(i) against whom judgment has been entered in the proceeding; or

(ii) in relation to whom the proceeding has been dismissed, withdrawn, discontinued or permanently stayed; and

(b) against whom there is no further claim in the proceeding.

additional authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

addressee, for a subpoena, means the person who is the subject of the order expressed in the subpoena.

address for service, in relation to a proceeding (including a proceeding on an application in the proceeding), means—

(a) for a person represented by a solicitor in the proceeding—

(i) if the solicitor has a place of business in the ACT—the business address, and any of the following, given by the solicitor to the court for the proceeding:

(A) a document exchange box number in the ACT;

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(B) a postbox number at a post office in the ACT;

(C) a fax number;

(D) an email address; or

(ii) in any other case—the address of a place in the ACT given by the solicitor to the court for the proceeding; or

(b) for a plaintiff, defendant or anyone else acting in person in a civil proceeding—

(i) if the person has a home or place of business in the ACT—the home or business address given by the person to the court for the proceeding; or

(ii) in any other case—the address of a place in the ACT given by the person to the court for the proceeding; or

(c) for an accused person or convicted person acting in person—

(i) if the person is in custody—the address of the place of custody, whether in or outside the ACT; or

(ii) if the person is granted bail—the address given for bail, whether in or outside the ACT; or

(iii) in any other case—the address for service (if any) in the ACT given by the person to the registrar; or

(d) for the director of public prosecutions—the director's business address in the ACT, and any of the following, given by the director to the court for the proceeding:

(i) a document exchange box number in the ACT;

(ii) a postbox number at a post office in the ACT;

(iii) a fax number;

(iv) an email address.

Administration and Probate Act, for part 3.1 (Administration and probate)—see rule 3000.

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administration bond, for part 3.1 (Administration and probate)—see rule 3045.

admission, for part 3.11 (Legal profession)—see rule 3600.

Adoption Act, for part 3.2 (Adoption)—see rule 3150.

adoption proceeding, for part 3.2 (Adoption)—see rule 3150.

affidavit in support, for division 2.11.3 (Default by defendant)—see rule 1119.

amendment order, for part 3.2 (Adoption)—see rule 3150.

ancillary order, for division 2.9.4 (Injunctions and similar orders)—see rule 742.

another court, for subdivision 2.9.4.2 (Freezing orders)—see rule 740.

APLEC, for part 3.11 (Legal profession)—see rule 3600.

appeal—

(a) for part 5.2 (Appeals from registrar)—see rule 5010; and

(b) for part 5.3 (Appeals to Supreme Court)—see rule 5050; and

(c) for division 5.4.4 (Appeals to Court of Appeal—procedure generally), division 5.4.5 (Appeals to Court of Appeal—appeal papers and hearing) and division 5.4.6 (Appeals to Court of Appeal—ending all or part of appeal)—see rule 5400; and

(d) for division 5.4.7 (Appeals to Court of Appeal—convictions and sentences)—see rule 5500; and

(e) for part 5.8 (Written cases)—see rule 5850.

appearance date, for part 4.3 (Supreme Court criminal proceedings)—see rule 4731.

appellant, for part 5.8 (Written cases)—see rule 5850.

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appellate proceeding means a proceeding to which chapter 5 applies.

Note For the proceedings to which ch 5 applies, see the following rules:

- r 5011 (Application—pt 5.2)
- r 5051 (Application—pt 5.3)
- r 5070 (Application—div 5.3.2)
- r 5081 (Application—div 5.3.3)
- r 5310 (Application—div 5.4.2)
- r 5331 (Application—div 5.4.3)
- r 5401 (Application—divs 5.4.4-5.4.6)
- r 5505 (Application—sdiv 5.4.7.2)
- r 5520 (Application of div 5.4.3 to certain appeals by DPP)
- r 5800 (Application—div 5.7.1)
- r 5851 (Application of pt 5.8 to div 5.6.1 etc).

applicable convention, in relation to a request issued by or on behalf of a court or tribunal of a foreign country, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

applicant—

(a) for subdivision 2.9.4.2 (Freezing orders)—see rule 740; and

(b) for subdivision 2.9.4.3 (Search orders)—see rule 750; and

(c) for division 5.6.1 (Reference appeals—Supreme Court)—see rule 5750; and

(d) for division 5.6.2 (Reference appeals—Court of Appeal)—see rule 5770; and

(e) for division 6.8.12 (Service under the Hague Convention)—see rule 6550; and

(f) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

application, in a proceeding—see rule 6006 (Application—pt 6.2).

application for a costs assessment, for part 3.11 (Legal profession)—see rule 3600.

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application for admission, for part 3.11 (Legal profession)—see rule 3600.

approved academic institution, for part 3.11 (Legal profession)—see rule 3600.

approved course of study, for part 3.11 (Legal profession)—see rule 3600.

approved form means a form approved under the *Court Procedures Act 2004*, section 8 for these rules.

approved PLT course, for part 3.11 (Legal profession)—see rule 3600.

approved PLT provider, for part 3.11 (Legal profession)—see rule 3600.

approved subject, for part 3.11 (Legal profession)—see rule 3600.

arbitration, for part 3.13 (Workers compensation)—see rule 3900.

ASIC Act, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

assessed costs means costs and disbursements assessed under part 2.17 (Costs).

attached to a document includes incorporated into the document.

Australia, for division 6.8.9 (Service out of Australia)—see rule 6500.

Australian court, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

authorised DX system means the document exchange approved by practice note.

bailiff—see the *Magistrates Court Act 1930*, dictionary.

beneficiary, for division 2.20.4 (Executors, administrators and trustees—accounts and commission)—see rule 2745.

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business—see the *Business Names Registration Act 2011* (Cwlth), section 4.

business name—see the *Business Names Registration Act 2011* (Cwlth), section 3.

carrying on, a business—see the *Business Names Registration Act 2011* (Cwlth), section 3.

case statement, for part 4.3 (Supreme Court criminal proceedings)—see rule 4732.

case summary, for division 5.4.4 (Appeals to Court of Appeal—procedure generally)—see rule 5400A.

caveator, for division 3.1.7 (Caveats)—see rule 3065.

central authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

certificate of service, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

certifying authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

certiorari order, for part 3.10 (Judicial review)—see rule 3550.

charging order—see rule 2401.

civil proceeding does not include—

(a) a criminal proceeding; or

(b) a forensic proceeding.

claim, for part 3.13 (Workers compensation)—see rule 3900.

claim for relief includes—

(a) a claim for possession of land; and

(b) a claim for delivery of goods; and

(c) a claim for the recovery of damages or another amount; and

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(d) a claim for a declaration of right; and

(e) a claim for the decision of the court on any issue; and

(f) any other claim (whether legal, equitable or otherwise) that is justiciable in the court.

code of conduct, for part 2.12 (Expert evidence)—see rule 1201.

Commercial Arbitration Act, for part 3.3 (Commercial arbitration)—see rule 3250.

conciliator, for division 3.13.8 (Workers compensation—dispute resolution conference for arbitration)—see rule 3944.

concurrent proceedings, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.10 (1) (a).

condition includes term.

conduct money, for a subpoena, means an amount of money or its equivalent sufficient to meet the reasonable expenses of the addressee of attending as required by the subpoena and returning after attending.

Example of equivalent of money

prepaid travel

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

contractor, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 13 (Subcontracting).

convicted person, for division 5.4.7 (Appeals to Court of Appeal—convictions and sentences)—see rule 5500.

convicted person's application, for part 5.8 (Written cases)—see rule 5850.

conviction—

(a) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and

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(b) for chapter 5 (Appellate proceedings)—see rule 5000.

coordination agreement, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

Corporations Regulations, for schedule 6 (Rules for proceedings under Corporations Act or ASIC Act)—see schedule 6, rule 1.5.

correctional institution includes a NSW correctional institution.

costs of the proceeding, for a proceeding—see rule 1700.

court—

(a) for these rules generally—see rule 5 (1) and (2) (References to *court*, *judicial officer* etc); and

(b) for part 5.4 (Appeals to Court of Appeal)—see rule 5300.

court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050.

criminal proceeding means a proceeding against a person for an offence (whether summary or indictable); and

(a) includes—

(i) a committal proceeding; and

(ii) a proceeding in relation to bail; and

(iii) a proceeding in relation to sentence; but

(b) does not include—

(i) an appellate proceeding; or

(ii) for division 4.3.2 (Supreme Court criminal proceedings—representation)—an application in relation to bail.

Cross-Border Insolvency Act, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

Cross-vesting Act, for part 3.5 (Cross-vesting)—see rule 3300.

cross-vesting law, for part 3.5 (Cross-vesting)—see rule 3300.

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custody, for part 3.9 (Habeas corpus)—see rule 3500.

CYP director-general, for part 3.2 (Adoption)—see rule 3150.

date of filing—see rule 6126 (2).

debt redirection order—see rule 2301 (1).

decision, for part 5.2 (Appeals from registrar)—see rule 5010.

defence, for chapter 2 (Civil proceedings generally), includes an answer to a counterclaim.

defendant—

(a) for these rules generally—see rule 20; and

(b) for division 2.18.17 (Enforcement—arrest warrant for absconding defendants)—see rule 2551; and

(c) for part 3.9 (Habeas corpus)—see rule 3500; and

(d) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and

(e) for division 6.8.12 (Service under the Hague Convention)—see rule 6550; and

(f) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

deputy registrar—see rule 5 (5) (References to *court*, *judicial officer* etc).

described, for subdivision 2.9.4.3 (Search orders)—see rule 750.

director of public prosecutions includes the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1983* (Cwlth).

Note ***Director of public prosecutions*** is defined in the Legislation Act, dict, pt 1 as the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1990*. This definition extends the definition to include the Cwlth director.

discharging order, for part 3.2 (Adoption)—see rule 3150.

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discoverable document, for part 2.8 (Disclosure)—see rule 600.

dispensing order, for part 3.2 (Adoption)—see rule 3150.

dispute resolution conference, for division 3.13.8 (Workers compensation—dispute resolution conference for arbitration)—see rule 3942.

division 2.9.4 order—see rule 725.

division 3.1.9 proceeding, for division 3.1.9 (Other probate proceedings)—see rule 3090.

docket, of a judge or the associate judge, means the list of proceedings for which the judge or associate judge has responsibility for case management.

document, for part 2.8 (Disclosure)—see rule 600.

document exchange box means a document exchange box in an authorised DX system.

earnings, of an enforcement debtor, for part 2.18 (Enforcement)—see rule 2000.

earnings redirection order—see rule 2350.

election application, for part 3.6 (Electoral matters)—see rule 3350.

Electoral Act, for part 3.6 (Electoral matters)—see rule 3350.

electronic communication means a communication of information in the form of data, text or images using guided or unguided electromagnetic energy.

Examples

1 email

2 email attachment

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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email address means the mailing address to and from which an electronic communication may be sent and received using the internet, an intranet or other similar network.

employer, of an enforcement debtor, for part 2.18 (Enforcement)—see rule 2000.

enforceable money order, of the court—see rule 2000.

enforceable non-money order, of the court, for part 2.18 (Enforcement)—see rule 2000.

enforcement creditor, for an enforceable money order of the court—see rule 2000.

enforcement debtor, for an enforceable money order of the court—see rule 2000.

enforcement hearing subpoena, for part 2.18 (Enforcement)—see rule 2000.

enforcement hearing warrant, for part 2.18 (Enforcement)—see rule 2000.

enforcement officer—see rule 2000.

enforcement order, of the court—see rule 2000.

estate—

(a) for division 2.20.4 (Executors, administrators and trustees—accounts and commission)—see rule 2745; and

(b) for part 3.1 (Administration and probate)—see rule 3000.

Evidence Act means the *Evidence Act 2011*.

examination, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

examination order, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

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examination summons, for schedule 6 (Corporations Rules), part 6.11—see schedule 6, rule 11.1.

examiner, in relation to an examination, for division 6.10.8 (Taking evidence otherwise than at trial)—see rule 6810.

exempt property for part 2.18 (Enforcement)—see rule 2000.

expert, in relation to a proceeding—see rule 1202.

expert report, in relation to a proceeding—see rule 1202.

expert witness, in relation to a proceeding—see rule 1202.

family violence proceeding means a proceeding under the *Family Violence Act 2016*.

filed—a document is ***filed*** in the court if—

(a) the document is lodged at the registry for filing by the court; or

(b) filing of the document in the court by electronic communication is allowed under a practice note and the document is filed in accordance with the practice note; or

(c) the registrar gives leave to file the document in the court by electronic communication and the document is sent by electronic communication to the registry's email address for the filing of documents.

final judgment, for division 5.4.3 (Appeals to Court of Appeal—leave to appeal out of time from final judgments)—see rule 5330.

foreign confiscation order, for division 3.7.1 (Foreign confiscation orders—registration)—see rule 3450.

Foreign Judgments Act, for part 3.8 (Foreign judgments—reciprocal enforcement)—see rule 3470.

foreign judicial document, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

foreign party participation, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.10 (1) (c).

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forensic proceeding, for part 4.4 (Forensic proceedings)—see rule 4800.

forwarding authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

fourth person, for division 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

freezing order, for division 2.9.4 (Injunctions and similar orders)—see rule 741.

Global Guidelines, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

Global Principles, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

government, for part 2.8 (Disclosure)—see rule 600.

grant of representation, for an estate, for division 3.1.7 (Caveats)—see rule 3065.

habeas corpus order, for part 3.9 (Habeas corpus)—see rule 3500.

Hague Convention, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

Hague Convention country, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

head of jurisdiction means—

(a) in relation to the Supreme Court—the Chief Justice; or

(b) in relation to the Magistrates Court—the Chief Magistrate.

hearing includes trial.

incorporated limited partnership—see the *Partnership Act 1963*, section 51.

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in default, for a defendant—

(a) for division 2.11.3 (Default by defendant)—see rule 1117 (When is a defendant *in default*—generally); and

(b) for division 2.11.4 (Default by defendant—partial defence)—see rule 1137 (When is a defendant *in default*—partial defence).

initiating party, for division 5.7.1 (Questions referred—Supreme Court)—see rule 5801.

initiating process, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

injury notice, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 123 (The notice for an injury).

instalment order—see rule 2150.

instalment order agreement, for part 2.18 (Enforcement)—see rule 2157.

issued, for a document filed in the court, means the document has been sealed or stamped by the court.

issuing officer, for part 6.9 (Subpoenas)—see rule 6600 (1).

issuing party, for a subpoena, for part 6.9 (Subpoenas)—see rule 6600 (1).

interested party—

(a) for division 5.6.1 (Reference appeals—Supreme Court)—see rule 5750; and

(b) for division 5.6.2 (Reference appeals—Court of Appeal)—see rule 5770.

interest in a managed investment scheme—see the Corporations Act, section 9.

interlocutory process, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

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interstate confiscation order, for division 3.7.2 (Interstate confiscation orders—registration)—see rule 3460.

judgment, for part 3.8 (Foreign judgments—reciprocal enforcement)—see rule 3470.

judgment in favour of the defendant, for part 2.10 (Offers of compromise)—see rule 1001.

judicial officer—see rule 5 (3) (References to *court*, *judicial officer* etc).

Judicial Review Act, for part 3.10 (Judicial review)—see rule 3550.

judicial review application, for part 3.10 (Judicial review)—see rule 3550.

LACC, for part 3.11 (Legal profession)—see rule 3600.

land, for division 2.9.6 (Sales of land by court order)—see rule 780.

Legal Profession Act, for part 3.11 (Legal profession)—see rule 3600.

liquidated demand means a claim for payment of a specific sum of money the amount of which is worked out or capable of being worked out by calculation, and includes a claim for interest up to judgment.

listing hearing means a hearing for directions under rule 1325.

list of documents, for part 2.8 (Disclosure)—see rule 600.

local judicial document, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

local proceeding, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

made, for an order that is a judgment, means given.

mediation, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (1).

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mediation session, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (2).

Model Law, for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

money order—see rule 2000.

motor vehicle, for chapter 2 (Civil proceedings generally), means a motor vehicle or trailer within the meaning of the *Road Transport (General) Act 1999*.

neutral evaluation, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (3).

neutral evaluation session, for division 2.11.7 (Mediation and neutral evaluation)—see rule 1176 (5).

non-money order—see rule 2000.

notice claiming contribution or indemnity, for chapter 2 (Civil proceedings generally)—see rule 319 (1).

notice for non-party production, for chapter 2 (Civil proceedings generally), means a notice under rule 660.

notice of intention to respond includes a conditional notice of intention to respond.

offer, for part 2.10 (Offers of compromise)—see rule 1001.

officer, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

opposite party means defendant (in relation to a plaintiff) and plaintiff (in relation to a defendant).

order—

(a) for these rules generally—includes a judgment, decree, direction or decision, whether or not final; and

(b) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and

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(c) of a court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050; and

(d) for division 5.4.4 (Appeals to Court of Appeal—procedure generally), division 5.4.5 (Appeals to Court of Appeal—appeal papers and hearing) and division 5.4.6 (Appeals to Court of Appeal—ending all or part of appeal)—see rule 5400.

order debt, for an enforceable money order of the court, for part 2.18 (Enforcement)—see rule 2000.

order for access to identifying information, for part 3.2 (Adoption)—see rule 3150.

order for delivery of possession of land—see rule 2451.

order for seizure and delivery of goods—see rule 2460.

order for seizure and detention of property—see rule 2470.

originating process—

(a) for these rules generally—means an originating claim, originating application or application for arbitration; and

(b) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

out of time—

(a) for division 5.3.3 (Appeals to Supreme Court—leave to appeal out of time)—see rule 5080; and

(b) for division 5.4.3 (Appeals to Court of Appeal—leave to appeal out of time from final judgments)—see rule 5330; and

(c) for division 5.4.7 (Appeals to Court of Appeal—convictions and sentences)—see rule 5500.

partner, for part 2.18 (Enforcement)—see rule 2000.

partnership—see the *Partnership Act 1963*, section 6.

partnership proceeding, for division 2.4.10 (Partnerships)—see rule 285.

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party—

(a) for part 2.17 (Costs)—see rule 1700; and

(b) for a criminal proceeding—includes an accused person and the director of public prosecutions.

period of acceptance, for an offer, for part 2.10 (Offers of compromise)—see rule 1001.

personal violence proceeding means a proceeding under the *Personal Violence Act 2016*.

person with a legal disability means—

(a) a child; or

(b) a person with a mental disability.

person with a mental disability, for a proceeding, means a person who is not legally competent to be a party to the proceeding, and includes the person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

plaintiff—

(a) for these rules generally—see rule 20; and

(b) for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551; and

(c) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

pleading—

(a) includes—

(i) a statement of claim; and

(ii) a defence; and

(iii) a reply; and

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(iv) a counterclaim made in a proceeding started by originating claim or third-party notice; and

(v) an answer to a counterclaim; and

(vi) a response to an answer to a counterclaim; and

(vii) an affidavit ordered to be treated as pleadings; and

(viii) an application for arbitration; and

(ix) an answer to an application for arbitration; and

(x) a third-party notice for an arbitration; but

(b) does not include—

(i) an originating claim; or

(ii) an originating application; or

(iii) a third-party notice other than a third-party notice for an arbitration; or

(iv) an application in a proceeding.

Note A pleading must comply with pt 2.6 (Pleadings).

possession, in relation to something other than land, includes custody and power.

practice direction, for part 5.4 (Appeals to Court of Appeal)—see rule 5300A.

practice note means a practice note under rule 6907.

premises, for subdivision 2.9.4.3 (Search orders)—see rule 750.

prepaid post includes post that is paid for after it is posted if—

(a) it is accepted for delivery by post; and

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(b) the postage is not paid (or to be paid) by the person to whom it is delivered (or to be delivered).

Example

A person has a contract with Australia Post under which Australia Post periodically bills the person for items given by the person to Australia Post for delivery.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

prerogative injunction, for part 3.10 (Judicial review)—see rule 3550.

prerogative order, for part 3.10 (Judicial review)—see rule 3550.

prerogative relief, for part 3.10 (Judicial review)—see rule 3550.

prescribed costs amount, for part 2.11.1 (Uncontested debts and liquidated demands)—see rule 1100.

prescribed offender, for part 4.4 (Forensic proceedings)—see rule 4800.

prescribed scale of costs—

(a) for part 2.17 (Costs)—see rule 1700; and

(b) for part 3.13 (Workers compensation)—see rule 3900.

principal, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 13 (Subcontracting).

principal officer, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

privileged from production, for part 2.8 (Disclosure)—see rule 601.

proceeding, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

prohibition order, for part 3.10 (Judicial review)—see rule 3550.

qualified person, for division 2.11.3 (Default by defendant)—see rule 1115.

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question, for part 2.15 (Trial)—see rule 1500.

question referred—

(a) to the Supreme Court, for division 5.7.1 (Questions referred—Supreme Court)—see rule 5801; and

(b) to the Court of Appeal, for division 5.7.2 (Questions referred—Court of Appeal)—see rule 5831.

quo warranto order, for part 3.10 (Judicial review)—see rule 3550.

reference appeal—

(a) for division 5.6.1 (Reference appeals—Supreme Court)—see rule 5750; and

(b) for division 5.6.2 (Reference appeals—Court of Appeal)—see rule 5770.

referring court or tribunal, for division 5.7.1 (Questions referred—Supreme Court)—see rule 5800.

register—

(a) for division 3.7.1 (Foreign confiscation orders—registration)—see rule 3450; and

(b) for division 3.7.2 (Interstate confiscation orders—registration)—see rule 3460.

registrar—

(a) for these rules generally—see rule 5 (4) (References to *court*, *judicial officer* etc); and

(b) of a court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050; and

(c) for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

registry—see rule 5 (6) (References to *court*, *judicial officer* etc).

regular debt, for part 2.18 (Enforcement)—see rule 2332.

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regular deposit, for division 2.18.7 (which is about regular redirections from financial institutions)—see rule 2330.

regular redirection order—see rule 2332.

relevant law, in relation to an appeal, for part 5.3 (Appeals to Supreme Court)—see rule 5050.

relief includes remedy.

reply includes a response to an answer to a counterclaim.

representative, for part 3.13 (Workers compensation)—see rule 3900.

request, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

request for service abroad, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

request for service in the ACT, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

requesting court, in relation to a request or an order under rule 6843 made on a request, for division 6.10.9 (Taking evidence for Australian and foreign courts and tribunals)—see rule 6840.

respondent—

(a) in relation to a notice for non-party production, for part 2.8 (Disclosure)—see rule 600; and

(b) for subdivision 2.9.4.2 (Freezing orders)—see rule 740; and

(c) for subdivision 2.9.4.3 (Search orders)—see rule 750; and

(d) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

return date means—

(a) for an application—the date (if any) set by the court for the application to be next before the court; and

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(b) for a subpoena—the date set by the court for the subpoena to be complied with.

review order, for part 5.5 (Orders to review Magistrates Court decisions)—see rule 5700.

schedule of correspondence, for part 6.2 (Applications in proceedings)—see rule 6005.

script, for division 3.1.9 (Other probate proceedings)—see rule 3090.

sealed, for a document, means stamped with the court's seal.

search order, for division 2.9.4 (Injunctions and similar orders)—see rule 751.

security interest, for part 2.18 (Enforcement)—see rule 2401.

seizure and sale order—see rule 2200.

senior officer, of a corporation, for part 2.18 (Enforcement)—see rule 2000.

sentence—

(a) for part 4.3 (Supreme Court criminal proceedings)—see rule 4700; and

(b) for chapter 5 (Appellate proceedings)—see rule 5000.

serious offender, for part 4.4 (Forensic proceedings)—see rule 4800.

service list, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

set aside means—

(a) for a document—the document cannot be relied on in a proceeding; or

(b) for anything else—the thing stops having effect.

sheriff—see the *Court Procedures Act 2004*, section 40.

sheriff's officer—see the *Court Procedures Act 2004*, section 40.

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solicitor—to remove any doubt, ***solicitor*** includes a firm of solicitors.

special federal matter, for part 3.5 (Cross-vesting)—see rule 3300.

stamped, for a document, means stamped under rule 6304.

statutory order of review, for part 3.10 (Judicial review)—see rule 3550.

subpoena means an order in writing requiring the addressee—

(a) to attend to give evidence; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both of those things.

subpoenaed document or thing, for division 6.10.5 (Exhibits, documents and things)—see rule 6760.

subpoena to attend to give evidence, for part 6.9 (Subpoenas)—see rule 6600 (2).

subpoena to produce, for part 6.9 (Subpoenas)—see rule 6600 (3).

supporting affidavits, for an originating application—see rule 60 (4) (Content of originating application).

supporting material, for an application, for part 5.4 (Appeals to Court of Appeal)—see rule 5300A.

supporting material, for an application in a proceeding, for part 6.2 (Applications in proceedings)—see rule 6005.

Supreme Court—

(a) for division 5.7.1 (Questions referred—Supreme Court)—see rule 5801; and

(b) for division 5.7.2 (Questions referred—Court of Appeal)—see rule 5831.

the Act, for part 4.4 (Forensic proceedings)—see rule 4800.

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the Crimes Act, for part 4.4 (Forensic proceedings)—see rule 4800.

these rules include the practice notes and approved forms.

third party—see rule 322 (2) (b) (Third-party notice—fourth and subsequent parties).

third-party notice—see rule 322 (2) (c) (Third-party notice—fourth and subsequent parties).

third-party respondent, for part 3.13 (Workers compensation)—see rule 3920 (Arbitration—including other parties).

third person, for division 2.18.6 (which is about debt redirection orders generally)—see rule 2300 (1).

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

tribunal—

(a) for part 5.3 (Appeals to Supreme Court)—see rule 5050; and

(b) for division 5.7.1 (Questions referred—Supreme Court)—see rule 5801.

trustee, for part 2.17 (Costs)—see rule 1700.

undefended part of the claim, for division 2.11.4 (Default by defendant—partial defence)—see rule 1137.

usual undertaking as to damages, for part 2.9 (Preservation of rights and property)—see rule 700.

Workers Compensation Act, for part 3.13 (Workers compensation)—see rule 3900.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

Court Procedures Rules 2006 SL2006-29
notified LR 16 June 2006
r 1, r 2 commenced 16 June 2006 (LA s 75 (1))
remainder commenced 1 July 2006 (r 2)

as amended by

Court Procedures Amendment Rules 2006 (No 1) SL2006-43
notified LR 14 August 2006
r 1, r 2 commenced 14 August 2006 (LA s 75 (1))
remainder commenced 15 August 2006 (r 2)

Court Procedures Amendment Rules 2006 (No 2) SL2006-58
notified LR 18 December 2006
r 1, r 2 commenced 18 December 2006 (LA s 75 (1))
remainder commenced 1 January 2007 (r 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.24
notified LR 22 March 2007
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))
sch 3 pt 3.24 commenced 12 April 2007 (s 2 (1))

Court Procedures Amendment Rules 2007 (No 1) SL2007-16
notified LR 25 June 2007
r 1, r 2 commenced 25 June 2007 (LA s 75 (1))
remainder commenced 1 July 2007 (r 2)

Legal Profession Amendment Act 2007 A2007-28 sch 1 pt 1.1
notified LR 28 September 2007
s 1, s 2 commenced 28 September 2007 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 October 2007 (s 2)

Court Procedures Amendment Rules 2007 (No 2) SL2007-37
notified LR 20 December 2007
r 1, r 2 commenced 20 December 2007 (LA s 75 (1))
remainder commenced 1 January 2008 (r 2)

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Court Procedures Amendment Rules 2008 (No 1) SL2008-25

notified LR 26 June 2008

r 1, r 2 commenced 26 June 2008 (LA s 75 (1))

r 11, r 12, r 17 commenced 29 July 2008 (r 2 (2) and see Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 s 2)

remainder commenced 1 July 2008 (r 2 (1))

Note The Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 was the Justice and Community Safety Legislation Amendment Bill 2008 when these rules were made on 18 June 2008.

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 3 pt 3.6, sch 4 pt 4.6

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 3 pt 3.6 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

sch 4 pt 4.6 commenced 27 February 2009 (s 2 (5) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-17 (and see CN2008-13))

Court Procedures Amendment Rules 2008 (No 2) SL2008-44

notified LR 29 September 2008

r 1, r 2 commenced 29 September 2008 (LA s 75 (1))

remainder commenced 1 October 2008 (r 2)

Court Procedures Amendment Rules 2008 (No 3) SL2008-50

notified LR 23 December 2008

r 1, r 2 commenced 23 December 2008 (LA s 75 (1))

r 6 commenced 30 May 2009 (r 2 (2) and see Crimes Legislation Amendment Act 2008 A2008-44, s 2 and CN2009-4)

remainder commenced 1 January 2009 (r 2 (1))

Court Procedures Amendment Rules 2009 (No 1) SL2009-11

notified LR 27 March 2009

r 1, r 2 commenced 27 March 2009 (LA s 75 (1))

remainder commenced 30 March 2009 (r 2 and see Domestic Violence and Protection Orders Act 2008 A2008-46 s 2)

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Court Procedures Amendment Rules 2009 (No 2) SL2009-32
notified LR 29 June 2009
r 1, r 2 commenced 29 June 2009 (LA s 75 (1))
remainder commenced 1 July 2009 (r 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.15
notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 3 pt 3.15 commenced 17 December 2009 (s 2)

Court Procedures Amendment Rules 2009 (No 3) SL2009-56
notified LR 17 December 2009
r 1, r 2 commenced 17 December 2009 (LA s 75 (1))
remainder commenced 1 January 2010 (r 2)

Health Legislation Amendment Act 2010 A2010-2 sch 1 pt 1.2
notified LR 16 February 2010
s 1, s 2 commenced 16 February 2010 (LA s 75 (1))
sch 1 pt 1.2 commenced 16 August 2010 (s 2 and LA s 79)

Crimes (Sentence Administration) Amendment Act 2010 A2010-21 sch 1 pt 1.3
notified LR 30 June 2010
s 1, s 2 commenced 30 June 2010 (LA s 75 (1))
sch 1 pt 1.3 commenced 1 July 2010 (s 2)

Court Procedures Amendment Rules 2010 (No 1) SL2010-24
notified LR 30 June 2010
r 1, r 2 commenced 30 June 2010 (LA s 75 (1))
remainder commenced 1 July 2010 (r 2)

Court Procedures Amendment Rules 2010 (No 2) SL2010-51
notified LR 16 December 2010
r 1, r 2 commenced 16 December 2010 (LA s 75 (1))
remainder commenced 1 January 2011 (r 2)

Court Procedures Amendment Rules 2011 (No 1) SL2011-6
notified LR 28 February 2011
r 1, r 2 commenced 28 February 2011 (LA s 75 (1))
remainder commenced 1 March 2011 (r 2)

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Court Procedures Amendment Rules 2011 (No 2) SL2011-17
notified LR 30 June 2011
r 1, r 2 commenced 30 June 2011 (LA s 75 (1))
r 12, r 41, r 47 commenced 21 September 2011 (r 2 (1) and see Statute Law Amendment Act 2011 (No 2) A2011-28, s 2 (1))
remainder commenced 1 July 2011 (r 2 (2))

Criminal Proceedings Legislation Amendment Act 2011 A2011-20 sch 1 pt 1.1
notified LR 6 July 2011
s 1, s 2 commenced 6 July 2011 (LA s 75 (1))
sch 1 pt 1.1 commenced 7 July 2011 (s 2)

Court Procedures Amendment Rules 2011 (No 3) SL2011-33
notified LR 24 November 2011
r 1, r 2 commenced 24 November 2011 (LA s 75 (1))
remainder commenced 11 October 2013 (r 2 and see Trans-Tasman Proceedings Act 2010 (Cwlth), s 2 and F2013L0445)

Court Procedures Amendment Rules 2011 (No 4) SL2011-34
notified LR 15 December 2011
r 1, r 2 commenced 15 December 2011 (LA s 75 (1))
rr 4-7, r 13, r 14, rr 27-29, r 32, r 33, r 35 commenced 1 March 2012 (r 2 (1) and see Evidence Act 2011 A2011-12, s 2 and CN2012-4)
rr 22-26, r 31, r 34 commenced 28 May 2012 (r 2 (2) and see Business Names Registration (Transition to Commonwealth) Act 2012 A2012-2 (s 2 (2))
remainder commenced 1 January 2012 (r 2 (3))

Court Procedures Amendment Rules 2012 (No 1) SL2012--24
notified LR 28 June 2012
r 1, r 2 commenced 28 June 2012 (LA s 75 (1))
remainder commenced 1 July 2012 (r 2)

Court Procedures Amendment Rules 2012 (No 2) SL2012--43
notified LR 21 December 2012
r 1, r 2 commenced 21 December 2012 (LA s 75 (1))
remainder commenced 1 January 2013 (r 2)

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Court Procedures Amendment Rules 2013 (No 1) SL2013-18
notified LR 28 June 2013
r 1, r 2 commenced 28 June 2013 (LA s 75 (1))
remainder commenced 1 July 2013 (r 2)

Court Procedures Amendment Rules 2013 (No 2) SL2013-32
notified LR 19 December 2013
r 1, r 2 commenced 19 December 2013 (LA s 75 (1))
remainder commenced 1 January 2014 (r 2)

Court Procedures Amendment Rules 2014 (No 1) SL2014-4
notified LR 14 March 2014
r 1, r 2 commenced 14 March 2014 (LA s 75 (1))
remainder commenced 15 March 2014 (r 2)

Court Procedures Amendment Rules 2014 (No 2) SL2014-9
notified LR 30 June 2014
r 1, r 2 commenced 30 June 2014 (LA s 75 (1))
remainder commenced 1 July 2014 (r 2)

Court Procedures Amendment Rules 2014 (No 3) SL2014-34
notified LR 23 December 2014
r 1, r 2 commenced 23 December 2014 (LA s 75 (1))
remainder commenced 1 January 2015 (r 2)

Court Procedures Amendment Rules 2015 (No 1) SL2015-12
notified LR 28 April 2015
r 1, r 2 commenced 28 April 2015 (LA s 75 (1))
remainder commenced 29 April 2015 (r 2)

Court Procedures Amendment Rules 2015 (No 2) SL2015-22
notified LR 29 June 2015
r 1, r 2 commenced 29 June 2015 (LA s 75 (1))
remainder commenced 1 July 2015 (r 2)

Crimes (Domestic and Family Violence) Legislation Amendment Act 2015 A2015-40 sch 1 pt 1.4
notified LR 4 November 2015
s 1, s 2 commenced 4 November 2015 (LA s 75 (1))
sch 1 pt 1.4 commenced 4 May 2016 (s 2 (2))

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Courts Legislation Amendment Act 2015 (No 2) A2015-52 pt 6
notified LR 26 November 2015
s 1, s 2 commenced 26 November 2015 (LA s 75 (1))
pt 6 commenced 10 December 2015 (s 2 (2))

Court Procedures Amendment Rules 2015 (No 3) SL2015-42
notified LR 17 December 2015
r 1, r 2 commenced 17 December 2015 (LA s 75 (1))
rr 6-8 commenced 7 April 2016 (r 2 (2) and see Courts Legislation Amendment Act 2015 (No 2) A2015-52, s 2 (1))
remainder commenced 1 January 2016 (r 2 (1))

Court Procedures Amendment Rules 2016 (No 1) SL2016-17
notified LR 30 June 2016
r 1, r 2 commenced 30 June 2016 (LA s 75 (1))
remainder commenced 1 July 2016 (r 2)

Court Procedures Amendment Rules 2016 (No 2) SL2016-31
notified LR 3 November 2016
r 1, r 2 commenced 3 November 2016 (LA s 75 (1))
remainder commenced 4 November 2016 (r 2)

Court Procedures Amendment Rules 2016 (No 3) SL2016-33
notified LR 15 December 2016
r 1, r 2 commenced 15 December 2016 (LA s 75 (1))
remainder commenced 1 January 2017 (r 2)

Court Procedures Amendment Rules 2017 (No 1) SL2017-9
notified LR 28 April 2017
r 1, r 2 commenced 28 April 2017 (LA s 75 (1))
remainder commenced 1 May 2017 (r 2)

Court Procedures Amendment Rules 2017 (No 2) SL2017-10
notified LR 28 April 2017
r 1, r 2 commenced 28 April 2017 (LA s 75 (1))
remainder commenced 1 May 2017 (r 2 and see Family Violence Act 2016 A2016-42, s 2 (2) (as am by A2017-10 s 7))

Court Procedures Amendment Rules 2017 (No 3) SL2017-17
notified LR 7 July 2017
r 1, r 2 commenced 7 July 2017 (LA s 75 (1))
remainder commenced 8 July 2017 (r 2)

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Court Procedures Amendment Rules 2017 (No 4) SL2017-40

notified LR 18 December 2017

r 1, r 2 commenced 18 December 2017 (LA s 75 (1))

remainder commenced 1 January 2018 (r 2)

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4 Amendment history

Commencement

r 2	om LA 89 (4)

Application of rules

r 4 hdg	bracketed note om R29 LA
r 4	(2), (4) exp 1 January 2007 (r 4 (4))
	am SL2009-11 r 6; SL2011-17 r 4; SL2011-33 r 4; SL2017-10 r 4
	(2), (3) exp on the day the last of the provisions mentioned in table 4.1, column 3 is repealed or otherwise ceases to apply for the purposes of proceedings in the Supreme Court (r 4 (3))

References to *court*, *judicial officer* etc

r 5 hdg	bracketed note om R29 LA
r 5	am SL2015-22 r 61

Dispensing with rules

r 6 hdg	bracketed note om R29 LA
r 6	am SL2014-34 r 4

Notes

r 8	(2), (3) exp 1 July 2009 (r 8 (3))

Meaning of *plaintiff* and *defendant*

r 20 hdg	bracketed note om R29 LA

Purpose of ch 2 etc

r 21 hdg	bracketed note om R29 LA
r 21	om A2015-52 s 22

Application—ch 2

r 22 hdg	bracketed note om R29 LA
r 22	am A2008-20 amdt 4.15; SL2011-17 r 5; SL2012-43 r 4, r 5; SL2017-10 r 5

Who may start and carry on a proceeding

r 30 hdg	bracketed note om R29 LA

Kinds of originating processes

r 31 hdg	bracketed note om R29 LA

When civil proceeding starts

r 32 hdg	bracketed note om R29 LA
r 32	am SL2009-56 r 4, r 5

When originating claim must be used

r 33 hdg	bracketed note om R29 LA

When originating application must be used

r 34 hdg	bracketed note om R29 LA

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When originating application may be used
r 35 hdg bracketed note om R29 LA

When oral originating application may be made in Supreme Court
r 37 hdg bracketed note om R29 LA

Proceeding incorrectly started by originating claim
r 38 hdg bracketed note om R29 LA

Proceeding incorrectly started by originating application
r 39 hdg bracketed note om R29 LA

Setting aside originating process etc
r 40 hdg bracketed note om R29 LA
r 40 am SL2017-17 r 4

Originating claim—content etc
r 50 hdg bracketed note om R29 LA

Originating claim—additional matters for claims for debt and liquidated demands
r 51 hdg bracketed note om R29 LA

Originating claim—statement of claim for motor vehicle death and personal injury claims
r 52 hdg bracketed note om R29 LA

Originating claim—statement of claim for employment death and personal injury claims
r 53 hdg bracketed note om R29 LA
r 53 am SL2014-9 r 4

Originating claim—filing and service
r 54 hdg bracketed note om R29 LA

Originating claim—abandonment of excess in Magistrates Court
r 55 hdg bracketed note om R29 LA
r 55 ins SL2006-58 amdt 1.1
am SL2013-18 r 4

Originating application—content etc
r 60 hdg bracketed note om R29 LA

Originating application—filing and service
r 61 hdg bracketed note om R29 LA

When originating application must be served
r 62 hdg bracketed note om R29 LA

What happens if originating application not served in time
r 63 hdg bracketed note om R29 LA

Originating application—filing and service of supporting affidavits
r 64 hdg bracketed note om R29 LA

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Originating process to be sealed
r 70 hdg bracketed note om R29 LA

Numbering etc of proceedings
r 71 hdg bracketed note om R29 LA

Originating process—solicitor's statement about filing
r 72 hdg bracketed note om R29 LA

Defendant taken to be served by filing notice of intention to respond or defence
r 73 hdg bracketed note om R29 LA

Originating process—duration and renewal
r 74 hdg bracketed note om R29 LA

When proceeding taken to be dismissed
r 75 hdg sub SL2009-56 r 6
bracketed note om R29 LA
r 75 am SL2008-25 r 4; ss renum R10 LA; SL2009-56 r 7

Reinstating dismissed proceeding
r 76 hdg sub SL2009-56 r 8
bracketed note om R29 LA
r 76 am SL2009-56 rr 9-11; ss renum R21 LA

No step without notice of intention to respond or defence
r 100 hdg bracketed note om R29 LA

Notice of intention to respond or defence—details to be included
r 101 hdg bracketed note om R29 LA

Notice of intention to respond or defence—filing and service
r 102 hdg bracketed note om R29 LA

Notice of intention to respond or defence—late filing or service
r 103 hdg bracketed note om R29 LA

Ground of defence arising after defence filed etc
r 104 hdg bracketed note om R29 LA

Defence—reliance on defence not disclosed
r 105 hdg bracketed note om R29 LA

Defendant may submit to judgment by notice of intention to respond
r 106 hdg bracketed note om R29 LA

Notice of intention to respond or defence—several defendants with same solicitor
r 107 hdg bracketed note om R29 LA

Notice of intention to respond or defence—person sued under partnership name
r 108 hdg bracketed note om R29 LA

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Notice of intention to respond or defence—person incorrectly served as partner
r 109 hdg bracketed note om R29 LA

Notice of intention to respond or defence—person sued under business name
r 110 hdg bracketed note om R29 LA
r 110 am SL2011-34 r 34

Conditional notice of intention to respond
r 111 hdg bracketed note om R29 LA

Application—div 2.3.2
r 150 hdg bracketed note om R29 LA

Proceeding for possession of land—leave to file defence etc
r 151 hdg bracketed note om R29 LA

Proceeding for possession of land—filing defence etc
r 152 hdg bracketed note om R29 LA

Proceeding for possession of land—service of defence etc
r 153 hdg bracketed note om R29 LA

Including causes of action
r 200 hdg bracketed note om R29 LA

Joint and separate claims
r 201 hdg bracketed note om R29 LA

Including causes of action inconveniently etc
r 202 hdg bracketed note om R29 LA

Necessary parties
r 210 hdg bracketed note om R29 LA

Including parties—common issues of law or fact
r 211 hdg bracketed note om R29 LA

Including parties—defendants may be sued jointly, severally, or in alternative
r 212 hdg bracketed note om R29 LA

Including parties—joint entitlement
r 213 hdg bracketed note om R29 LA

Including parties—joint or several liability
r 214 hdg bracketed note om R29 LA

Including parties—plaintiff in doubt about defendant etc
r 215 hdg bracketed note om R29 LA

Including defendants—identical interest in relief unnecessary
r 216 hdg bracketed note om R29 LA

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Including parties inconveniently etc
r 217 hdg bracketed note om R29 LA

Including parties—parties incorrectly included or not included
r 218 hdg bracketed note om R29 LA

Counterclaim or set-off when co-plaintiff wrongly included
r 219 hdg bracketed note om R29 LA

Court may include party if appropriate or necessary
r 220 hdg bracketed note om R29 LA

Plaintiffs may be included or substituted
r 221 hdg bracketed note om R29 LA

Inclusion or substitution as plaintiff requires agreement
r 222 hdg bracketed note om R29 LA

Including parties—procedure
r 223 hdg bracketed note om R29 LA

Including parties—inclusion to recover costs
r 224 hdg bracketed note om R29 LA

Removing parties
r 230 hdg bracketed note om R29 LA

Party becomes bankrupt, dies or becomes person with mental disability
r 231 hdg bracketed note om R29 LA

Amending or setting aside order for new party made on death etc of party
r 232 hdg bracketed note om R29 LA

Failure to proceed after death of party
r 233 hdg bracketed note om R29 LA

Included or substituted defendant—filing and service of amended originating process
r 241 hdg bracketed note om R29 LA

Included or substituted parties—date proceeding taken to start
r 242 hdg bracketed note om R29 LA
r 242 am SL2009-56 r 12

Included or substituted parties—effect of action previously taken in proceeding
r 243 hdg bracketed note om R29 LA

Included or changed parties—other orders about future conduct of proceeding
r 244 hdg bracketed note om R29 LA

Representation in proceedings for personal injuries
div 2.4.4A hdg ins SL2010-51 r 4

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Separate representation of defendant for insurer's period on risk
r 245 ins SL2010-51 r 4

One proceeding for benefit of members of deceased person's family
r 250 hdg bracketed note om R29 LA

Orders in proceedings for compensation to relatives in death claims
r 251 hdg bracketed note om R29 LA

Representation—by trustees and personal representatives
r 256 hdg bracketed note om R29 LA

Representation—trustees and personal representatives must be parties
r 257 hdg bracketed note om R29 LA

Representation—beneficiaries and claimants
r 258 hdg bracketed note om R29 LA

Representation—proceeding about administration of deceased person's estate or trust property
r 259 hdg bracketed note om R29 LA

Representation—orders bind represented people in estate or trust proceeding
r 260 hdg bracketed note om R29 LA

Representation—interests of deceased person's estate
r 261 hdg bracketed note om R29 LA

Application—div 2.4.7
r 265 hdg bracketed note om R29 LA

Representation—numerous concurrent interests
r 266 hdg bracketed note om R29 LA

Orders in div 2.4.7 proceeding bind represented people
r 267 hdg bracketed note om R29 LA

Consolidation etc of proceedings
r 270 hdg bracketed note om R29 LA

Person with legal disability—litigation guardian to start proceeding etc
r 275 hdg bracketed note om R29 LA
r 275 am A2008-20 amdt 4.16

Who may be litigation guardian
r 276 hdg bracketed note om R29 LA
r 276 am SL2009-32 r 4; SL2016-17 r 11; SL2017-40 r 4; pars renum R51 LA

Litigation guardian—liability for costs
r 277 hdg bracketed note om R29 LA

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Becoming a litigation guardian
r 278 hdg bracketed note om R29 LA

Person with legal disability—effect of no notice of intention to respond or defence
r 279 hdg bracketed note om R29 LA

Litigation guardian—appointment and removal by court
r 280 hdg bracketed note om R29 LA

Litigation guardian—accounts
r 281 hdg bracketed note om R29 LA

Person with legal disability—approval of settlement etc
r 282 hdg bracketed note om R29 LA
r 282 (prev r 1016) reloc and renum as r 282 SL2007-16 r 9
am SL2012-24 r 4; ss renum R32 LA

Meaning of *partnership proceeding*—div 2.4.10
r 285 hdg bracketed note om R29 LA

Proceeding in partnership name
r 286 hdg bracketed note om R29 LA

Disclosure of partners' names
r 287 hdg bracketed note om R29 LA

Proceeding in registered business name
r 290 hdg bracketed note om R29 LA
r 290 am SL2011-34 r 34

Proceeding in business name if unregistered etc
r 291 hdg bracketed note om R29 LA
r 291 am SL2011-34 r 34

Business names—amendment about parties
r 292 hdg bracketed note om R29 LA
r 292 am SL2011-34 r 34

Purpose—pt 2.5
r 300 hdg bracketed note om R29 LA

When a third-party proceeding starts
r 301 hdg bracketed note om R29 LA

Third-party proceeding—when available
r 302 hdg bracketed note om R29 LA

Third-party notice—content etc
r 303 hdg bracketed note om R29 LA

Third-party notice—additional matters for claims for debt and liquidated demands
r 304 hdg bracketed note om R29 LA

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Third-party notice—statement of claim for certain personal injury claims
r 305 hdg bracketed note om R29 LA

Third-party notice—filing
r 306 hdg bracketed note om R29 LA

Third-party notice—service
r 308 hdg bracketed note om R29 LA

Third-party notice—effect of service on third party
r 309 hdg bracketed note om R29 LA

Third-party notice—setting aside
r 310 hdg bracketed note om R29 LA

Third-party notice—notice of intention to respond and defence
r 311 hdg bracketed note om R29 LA

Service of pleadings after filing of third-party notice
r 312 hdg bracketed note om R29 LA

Counterclaim by third party
r 313 hdg bracketed note om R29 LA

Third-party notice—default by third party
r 314 hdg bracketed note om R29 LA

Third parties—disclosure
r 315 hdg bracketed note om R29 LA

Third-party notice—hearing
r 316 hdg bracketed note om R29 LA

Third party—extent bound by judgment between plaintiff and defendant
r 317 hdg bracketed note om R29 LA

Third-party notice—judgment between defendant and third party
r 318 hdg bracketed note om R29 LA

Notice claiming contribution or indemnity against another party
r 319 hdg sub SL2009-56 r 13
bracketed note om R29 LA
r 319 am SL2009-56 r 14, r 15

Notice claiming contribution or indemnity—filing and service etc
r 320 hdg bracketed note om R29 LA
r 320 am SL2009-56 r 16, r 17

Contribution under Civil Law (Wrongs) Act, s 21
r 321 hdg bracketed note om R29 LA
r 321 am SL2009-56 r 18

Third-party notice—fourth and subsequent parties
r 322 hdg bracketed note om R29 LA

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Application—pt 2.6
r 400 hdg bracketed note om R29 LA

Pleadings—formal requirements
r 405 hdg bracketed note om R29 LA

Pleadings—statements in
r 406 hdg bracketed note om R29 LA

Pleadings—matters to be specifically pleaded
r 407 hdg bracketed note om R29 LA

Pleadings in human rights proceedings—generally
r 407A ins SL2012-43 r 6

Pleadings in human rights proceedings—public authorities
r 407B ins SL2012-43 r 6

Pleadings—money claims short form
r 408 hdg bracketed note om R29 LA

Pleadings—certain facts need not be pleaded
r 409 hdg bracketed note om R29 LA

Pleadings—technical objections
r 410 hdg bracketed note om R29 LA

Pleadings—references to spoken words and documents
r 411 hdg bracketed note om R29 LA

Pleadings—conditions precedent
r 412 hdg bracketed note om R29 LA

Pleadings—matters arising after start of proceeding
r 413 hdg bracketed note om R29 LA

Pleadings—inconsistent allegations etc
r 414 hdg bracketed note om R29 LA

Pleadings—notice pleaded as a fact
r 415 hdg bracketed note om R29 LA

Pleadings—implied contracts or relations
r 416 hdg bracketed note om R29 LA

Pleadings—kind of damages etc
r 417 hdg bracketed note om R29 LA
r 417 am SL2007-37 r 4

Pleadings—amount of unliquidated damages
r 418 hdg bracketed note om R29 LA

Pleadings—other relief
r 419 hdg bracketed note om R29 LA

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Pleadings—striking out
r 425 hdg bracketed note om R29 LA

Pleadings—trial without
r 426 hdg bracketed note om R29 LA

Pleadings—all necessary particulars must be included
r 430 hdg bracketed note om R29 LA

Pleadings—use of 'Scott schedule'
r 431 hdg bracketed note om R29 LA

Pleadings—negligence and breach of statutory duty
r 432 hdg bracketed note om R29 LA

Pleadings—how particulars must be given
r 433 hdg bracketed note om R29 LA

Pleadings—application for better particulars
r 434 hdg bracketed note om R29 LA
r 434 am SL2015-22 r 4

Pleadings—failure to comply with better particulars order
r 435 hdg bracketed note om R29 LA

Pleadings—answering
r 440 hdg bracketed note om R29 LA

Pleadings—denials and non-admissions
r 441 hdg bracketed note om R29 LA

Pleadings—defence to debt and liquidated demand claims
r 442 hdg bracketed note om R29 LA

Pleadings—defence to motor vehicle and employment personal injuries claims
r 443 hdg bracketed note om R29 LA

Pleadings—defence to proceeding on bill of exchange etc
r 444 hdg bracketed note om R29 LA

Pleadings—denial of representative capacity or partnership constitution
r 445 hdg bracketed note om R29 LA

Pleadings—denial of contract
r 446 hdg bracketed note om R29 LA

Pleadings—allegations admitted unless denied etc
r 447 hdg bracketed note om R29 LA

Pleadings—unreasonable denials and non-admissions
r 448 hdg bracketed note om R29 LA

Pleadings—confession of defence
r 449 hdg bracketed note om R29 LA

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Pleadings—defence of tender
r 455 hdg bracketed note om R29 LA
r 455 sub SL2014-34 r 5

Pleadings—defence of set-off
r 456 hdg bracketed note om R29 LA

Counterclaim—cause of action arising after start of proceeding
r 460 hdg bracketed note om R29 LA

Counterclaim—against plaintiff
r 461 hdg bracketed note om R29 LA

Counterclaim—against additional party
r 462 hdg bracketed note om R29 LA

Counterclaim—abandonment of excess in Magistrates Court
r 463 hdg bracketed note om R29 LA

Counterclaim—pleading
r 464 hdg bracketed note om R29 LA

Counterclaim—plaintiff may rely on previous pleadings
r 465 hdg bracketed note om R29 LA

Counterclaim—answer to
r 466 hdg bracketed note om R29 LA

Counterclaim—defence arising after answer
r 467 hdg bracketed note om R29 LA

Counterclaim—effect of no answer
r 468 hdg bracketed note om R29 LA

Counterclaim—response to answer
r 469 hdg bracketed note om R29 LA

Counterclaim—conduct and pleading
r 470 hdg bracketed note om R29 LA

Counterclaim—order for separate hearing
r 471 hdg bracketed note om R29 LA

Counterclaim—after judgment etc in original proceeding
r 472 hdg bracketed note om R29 LA

Counterclaim—judgment for balance
r 473 hdg bracketed note om R29 LA

Counterclaim—stay of claim
r 474 hdg bracketed note om R29 LA

Pleadings—reply to defence
r 480 hdg bracketed note om R29 LA

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Pleadings—after reply
r 481 hdg bracketed note om R29 LA

Pleadings—joinder of issue
r 482 hdg bracketed note om R29 LA

Pleadings—close
r 483 hdg bracketed note om R29 LA

Admissions—voluntary admission
r 490 hdg bracketed note om R29 LA

Admissions—notice to admit facts or documents
r 491 hdg bracketed note om R29 LA

Admissions—withdrawal
r 492 hdg bracketed note om R29 LA

Admissions—orders on
r 493 hdg bracketed note om R29 LA

Amendment—when must be made
r 501 hdg bracketed note om R29 LA

Amendment—of documents
r 502 hdg bracketed note om R29 LA

Amendment—after limitation period
r 503 hdg bracketed note om R29 LA

Amendment—of originating process
r 504 hdg bracketed note om R29 LA
r 504 am SL2007-16 r 4

Amendment—of pleadings before close of pleadings
r 505 hdg bracketed note om R29 LA

Amendment—of pleadings disallowed
r 506 hdg bracketed note om R29 LA

Amendment—of pleadings after close of pleadings
r 507 hdg bracketed note om R29 LA
r 507 am SL2007-16 r 5

Amendment—when leave to amend ceases to have effect
r 508 hdg bracketed note om R29 LA

Amendment—procedure
r 509 hdg bracketed note om R29 LA
r 509 am SL2007-16 r 6, r 7

Amendment—person required to make
r 510 hdg bracketed note om R29 LA

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Amendment—service of amended or revised document etc
r 511 hdg bracketed note om R29 LA

Amendment—pleading to
r 512 hdg bracketed note om R29 LA

Amendment—costs
r 513 hdg bracketed note om R29 LA
r 513 sub SL2008-25 r 5

Amendment—taking effect
r 514 hdg bracketed note om R29 LA

Definitions—pt 2.8
r 600 hdg bracketed note om R29 LA
r 600 def ***document*** sub SL2011-34 r 4

Meaning of *privileged from production*—pt 2.8
r 601 hdg bracketed note om R29 LA
r 601 am SL2011-34 r 5, r 35

Discoverable documents
r 605 hdg bracketed note om R29 LA
r 605 am SL2010-24 rr 4-7; SL2011-34 r 35

Orders about disclosure
r 606 hdg bracketed note om R29 LA

Notice to disclose discoverable documents
r 607 hdg bracketed note om R29 LA
r 607 am SL2015-22 r 5

List of discoverable and privileged documents etc
r 608 hdg bracketed note om R29 LA
r 608 am SL2010-24 r 8

Claim for privilege—challenge etc
r 609 hdg bracketed note om R29 LA
r 609 am SL2011-34 r 35

Claim for privilege—waiver
r 610 hdg bracketed note om R29 LA

Continuing disclosure
r 611 hdg bracketed note om R29 LA

Production of documents for inspection
r 620 hdg bracketed note om R29 LA

Orders about production of documents for inspection
r 621 hdg bracketed note om R29 LA

Effect of inspection of documents disclosed by another party
r 622 hdg bracketed note om R29 LA

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Production of documents at hearing of proceeding
r 623 hdg bracketed note om R29 LA

Service of interrogatories
r 630 hdg bracketed note om R29 LA
r 630 am SL2015-22 r 6

Objections to answer interrogatories
r 631 hdg bracketed note om R29 LA
r 631 am SL2011-34 r 35

Orders about interrogatories
r 632 hdg bracketed note om R29 LA

Answers to interrogatories
r 633 hdg bracketed note om R29 LA

Answers to interrogatories—belief
r 634 hdg bracketed note om R29 LA
r 634 am SL2011-34 r 35

Answers to interrogatories to be verified
r 635 hdg bracketed note om R29 LA

Tendering of answers to interrogatories in evidence
r 636 hdg bracketed note om R29 LA

Answers by governments, corporations etc
r 640 hdg bracketed note om R29 LA

Party cannot swear affidavit personally
r 641 hdg bracketed note om R29 LA

Discovery to identify potential defendant
r 650 hdg bracketed note om R29 LA
r 650 am SL2015-42 r 4

Discovery to identify right to claim relief
r 651 hdg bracketed note om R29 LA
r 651 am SL2009-56 r 19

Order under div 2.8.6—privilege
r 652 hdg bracketed note om R29 LA

Order under div 2.8.6—costs
r 653 hdg bracketed note om R29 LA

Application—div 2.8.7
r 659 ins SL2015-42 r 5

Notice for non-party production—issue
r 660 hdg bracketed note om R29 LA

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Notice for non-party production—service
r 661 hdg bracketed note om R29 LA
r 661 am SL2011-17 r 6

Notice for non-party production—inspection by other parties
r 662 sub SL2011-17 r 7

Notice for non-party production—application to set aside
r 663 hdg bracketed note om R29 LA

Notice for non-party production—privilege or objection
r 664 hdg bracketed note om R29 LA
r 664 am SL2011-17 r 8, r 9

Notice for non-party production—failure to produce documents
r 665 hdg bracketed note om R29 LA

Notice for non-party production—copying produced documents
r 666 hdg bracketed note om R29 LA

Notice for non-party production—costs
r 667 hdg bracketed note om R29 LA

Contravention of pt 2.8 order—contempt of court
r 670 hdg bracketed note om R29 LA
r 670 sub SL2007-16 r 8

Contravention of pt 2.8 order—other action
r 671 hdg bracketed note om R29 LA

Solicitor to notify party of certain matters about pt 2.8
r 672 hdg bracketed note om R29 LA

Improper use of disclosed document
r 673 hdg bracketed note om R29 LA
r 673 am SL2012-24 r 5

Failure to disclose document
r 674 hdg bracketed note om R29 LA
r 674 am SL2011-34 r 6

Discovery by electronic means—practice notes
r 675 hdg bracketed note om R29 LA

Meaning of *usual undertaking as to damages*—pt 2.9
r 700 hdg bracketed note om R29 LA
r 700 am SL2007-37 r 5

Application—div 2.9.2
r 705 hdg bracketed note om R29 LA

Urgent orders before start of proceeding
r 706 hdg bracketed note om R29 LA

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Interim distribution
r 707 hdg bracketed note om R29 LA

Interim income
r 708 hdg bracketed note om R29 LA

Payment before finding out everyone interested
r 709 hdg bracketed note om R29 LA

Inspection, detention, custody and preservation of property—orders etc
r 715 hdg bracketed note om R29 LA
r 715 am SL2011-34 r 7

Disposal of property other than land
r 716 hdg bracketed note om R29 LA

Order for inspection, detention, custody or preservation affecting non-party
r 717 hdg bracketed note om R29 LA

Application for order for inspection, detention, custody or preservation
r 718 hdg bracketed note om R29 LA

Division 2.9.3—other jurisdiction of court not affected
r 719 hdg bracketed note om R29 LA

Definitions—div 2.9.4
r 726 hdg bracketed note om R29 LA

Division 2.9.4—other jurisdiction of court not affected
r 727 hdg bracketed note om R29 LA

Division 2.9.4 order—procedure
r 728 hdg bracketed note om R29 LA

Division 2.9.4 order without notice etc
r 729 hdg bracketed note om R29 LA

Division 2.9.4 order without trial
r 730 hdg bracketed note om R29 LA

Division 2.9.4 order—expedited trial
r 731 hdg bracketed note om R29 LA

Division 2.9.4 order—damages and undertaking as to damages
r 732 hdg bracketed note om R29 LA

Division 2.9.4 order—other undertakings and security to perform undertaking
r 733 hdg bracketed note om R29 LA

Freezing orders
sdiv 2.9.4.2 hdg note ins SL2017-17 r 5

Definitions—sdiv 2.9.4.2
r 740 hdg bracketed note om R29 LA

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Freezing orders—general
r 741 hdg bracketed note om R29 LA

Ancillary orders
r 742 hdg bracketed note om R29 LA

Freezing orders—order against enforcement debtor or prospective enforcement debtor or third party
r 743 hdg bracketed note om R29 LA

Freezing orders—service outside Australia of application for freezing order or ancillary order
r 744 hdg bracketed note om R29 LA
om SL2017-17 r 6

Freezing orders—costs
r 745 hdg bracketed note om R29 LA

Definitions—sdiv 2.9.4.3
r 750 hdg bracketed note om R29 LA

Search orders—general
r 751 hdg bracketed note om R29 LA

Search orders—requirements for making order
r 752 hdg bracketed note om R29 LA

Search orders—terms of order
r 753 hdg bracketed note om R29 LA

Search orders—independent solicitors
r 754 hdg bracketed note om R29 LA

Search orders—costs
r 755 hdg bracketed note om R29 LA

Application—div 2.9.5
r 765 hdg bracketed note om R29 LA

Receiver—agreement to act as etc
r 766 hdg bracketed note om R29 LA

Receiver—application for order appointing etc
r 767 hdg bracketed note om R29 LA

Receiver—address for service
r 768 hdg bracketed note om R29 LA

Receiver—security
r 769 hdg bracketed note om R29 LA

Receiver—remuneration
r 770 hdg bracketed note om R29 LA

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Receiver—accounts

r 771 hdg	bracketed note om R29 LA
r 771	am SL2006-58 amdt 1.2

Receiver—default

r 772 hdg	bracketed note om R29 LA

Receiver—powers

r 773 hdg	bracketed note om R29 LA

Receiver—duty in relation to property

r 774 hdg	bracketed note om R29 LA

Receiver—liability

r 775 hdg	bracketed note om R29 LA

Receiver—death of

r 776 hdg	bracketed note om R29 LA

Meaning of *land*—div 2.9.6

r 780 hdg	bracketed note om R29 LA

Application—div 2.9.6

r 781 hdg	bracketed note om R29 LA

Sale of land—order

r 782 hdg	bracketed note om R29 LA

Sale of land—conduct of sale

r 783 hdg	bracketed note om R29 LA

Sale of land—certificate of sale result

r 784 hdg	bracketed note om R29 LA

Mortgage, exchange or partition

r 785 hdg	bracketed note om R29 LA

Offers of compromise

pt 2.10 hdg	sub SL2014-34 r 6

Application—pt 2.10

r 1000 hdg	bracketed note om R29 LA
r 1000	sub SL2014-34 r 6

Definitions—pt 2.10

r 1001	sub SL2014-34 r 6
	def ***judgment in favour of the defendant*** ins SL2014-34 r 6
	def ***offer*** ins SL2014-34 r 6
	def ***period of acceptance*** ins SL2014-34 r 6

Making offer

r 1002 hdg	bracketed note om R29 LA
r 1002	sub SL2014-34 r 6

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Acceptance of offer

r 1003 hdg	bracketed note om R29 LA
r 1003	sub SL2014-34 r 6

Withdrawal of acceptance

r 1004 hdg	bracketed note om R29 LA
r 1004	sub SL2014-34 r 6

Failure to comply with accepted offer

r 1005 hdg	bracketed note om R29 LA
r 1005	sub SL2014-34 r 6

Disclosure of offer to court

r 1006 hdg	bracketed note om R29 LA
r 1006	am SL2006-58 amdt 1.3
	sub SL2014-34 r 6

Compromises in certain Supreme Court proceedings

r 1007 hdg	bracketed note om R29 LA
r 1007	sub SL2014-34 r 6

Offer to contribute

r 1008 hdg	bracketed note om R29 LA
r 1008	sub SL2014-34 r 6

Offer accepted and no provision for costs

r 1009 hdg	bracketed note om R29 LA
r 1009	sub SL2014-34 r 6

Offer not accepted and judgment no less favourable to plaintiff

r 1010 hdg	bracketed note om R29 LA
r 1010	sub SL2014-34 r 6

Offer not accepted and judgment no more favourable to plaintiff

r 1011 hdg	bracketed note om R29 LA
r 1011	sub SL2014-34 r 6

Offer not accepted and judgment no less favourable to defendant

r 1012 hdg	bracketed note om R29 LA
r 1012	sub SL2014-34 r 6

Costs in relation to interest

r 1013 hdg	bracketed note om R29 LA
r 1013	sub SL2014-34 r 6

Miscellaneous

r 1014	sub SL2014-34 r 6

Payment into court—amount recovered by person with legal disability

r 1015 hdg	bracketed note om R29 LA
r 1015	om SL2014-34 r 6

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Person with legal disability—approval of settlement etc
r 1016 reloc and renum as r 282

Person with legal disability—orders about recovered amounts etc
r 1017 hdg bracketed note om R29 LA
r 1017 om SL2014-34 r 6

Meaning of *prescribed costs amount*—div 2.11.1
r 1100 am SL2014-34 r 7

Stay of debt etc proceeding on payment of amount sought
r 1102 hdg bracketed note om R29 LA

Assessment of costs for stayed debt etc proceeding
r 1103 hdg bracketed note om R29 LA

Judgment on acknowledgment of debt or liquidated demand
r 1104 hdg bracketed note om R29 LA

Default by plaintiff—dismissal of proceeding
r 1110 hdg bracketed note om R29 LA

Application—div 2.11.3
r 1116 hdg bracketed note om R29 LA

When is a defendant *in default*—generally
r 1117 hdg bracketed note om R29 LA

Default judgment—generally
r 1118 hdg bracketed note om R29 LA

Default judgment—relevant affidavits
r 1119 hdg bracketed note om R29 LA
r 1119 am SL2006-58 amdt 1.4

Default judgment—debt or liquidated demand
r 1120 hdg bracketed note om R29 LA
am SL2016-33 rr 4-6; ss renum R48 LA; SL2017-17 r 7

Default judgment for debt or liquidated demand—assessment of costs
r 1121 hdg bracketed note om R29 LA

Default judgment—unliquidated damages
r 1122 hdg bracketed note om R29 LA
r 1122 am SL2015-22 r 7

Default judgment—detention of goods
r 1123 hdg bracketed note om R29 LA

Default judgment—recovery of possession of land
r 1124 hdg bracketed note om R29 LA

Default judgment—mixed claims
r 1125 hdg bracketed note om R29 LA

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Default judgment—other claims
r 1126 hdg bracketed note om R29 LA

Default judgment—costs only
r 1127 hdg bracketed note om R29 LA

Default judgment—setting aside etc
r 1128 hdg bracketed note om R29 LA

When is a defendant *in default*—partial defence
r 1137 hdg bracketed note om R29 LA

Default judgment—partial defence
r 1138 hdg bracketed note om R29 LA

Application—div 2.11.5
r 1145 hdg bracketed note om R29 LA

Summary judgment—for plaintiff
r 1146 hdg bracketed note om R29 LA

Summary judgment—for defendant
r 1147 hdg bracketed note om R29 LA

Claims not disposed of by summary disposal
r 1148 hdg bracketed note om R29 LA

Evidence in summary judgment proceedings
r 1149 hdg bracketed note om R29 LA

Summary judgment applications—filing and service
r 1150 hdg bracketed note om R29 LA

Summary judgment applications—directions etc
r 1151 hdg bracketed note om R29 LA

Summary judgment applications—costs
r 1152 hdg bracketed note om R29 LA

Summary judgment—stay of enforcement
r 1153 hdg bracketed note om R29 LA

Summary judgment—relief from forfeiture
r 1154 hdg bracketed note om R29 LA

Summary judgment—setting aside
r 1155 hdg bracketed note om R29 LA

Discontinuance or withdrawal by plaintiff
r 1160 hdg bracketed note om R29 LA
r 1160 am SL2015-22 r 8

Discontinuance or withdrawal of counterclaim by defendant
r 1161 hdg bracketed note om R29 LA

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Withdrawal of notice of intention to respond
r 1162 hdg bracketed note om R29 LA

Costs of discontinuance or withdrawal
r 1163 hdg bracketed note om R29 LA

Withdrawal of defence or further pleading
r 1164 hdg bracketed note om R29 LA

Notice of discontinuance or withdrawal
r 1165 hdg bracketed note om R29 LA

Discontinuance or withdrawal by party representing someone else etc
r 1166 hdg bracketed note om R29 LA

Discontinuance or withdrawal—subsequent proceeding
r 1167 hdg bracketed note om R29 LA

Consolidated proceedings and counterclaims
r 1168 hdg bracketed note om R29 LA

Stay pending payment of costs
r 1169 hdg bracketed note om R29 LA

Purpose—div 2.11.7
r 1175 hdg bracketed note om R29 LA

Definitions—div 2.11.7
r 1176 hdg bracketed note om R29 LA

Mediation—appointment of mediator
r 1177 hdg bracketed note om R29 LA
r 1177 am SL2015-42 r 6, r 7

Neutral evaluation—appointment of evaluator
r 1178 hdg bracketed note om R29 LA

Mediation or neutral evaluation—referral by court
r 1179 hdg bracketed note om R29 LA

Mediation or neutral evaluation—duty of parties to take part
r 1180 hdg bracketed note om R29 LA

Mediation or neutral evaluation—costs
r 1181 hdg bracketed note om R29 LA
r 1181 am SL2014-4 r 4

Mediation or neutral evaluation—agreements and arrangements arising from sessions
r 1182 hdg bracketed note om R29 LA
r 1182 am SL2015-42 r 8

Neutral evaluation—privilege
r 1183 hdg bracketed note om R29 LA

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Evaluators—secrecy
r 1184 hdg bracketed note om R29 LA

Evaluators—protection from liability
r 1185 hdg bracketed note om R29 LA

Purposes—pt 2.12
r 1200A renum as r 1200

Purposes—pt 2.12
r 1200 **orig r 1200**
renum as r 1201
pres r 1200
(prev r 1200A) ins SL2012-24 r 6
renum as r 1200 SL2012-24 r 7

Meaning of *code of conduct*—pt 2.12
r 1201 **orig r 1201**
renum as r 1202
pres r 1201
(prev r 1200) renum as r 1201 SL2012-24 r 7

Meaning of *expert*, *expert witness* and *expert report*
r 1202 hdg (prev r 1201 hdg) bracketed note om R29 LA
r 1202 **orig r 1202**
renum as r 1203
pres r 1202
(prev r 1201) renum as r 1202 SL2012-24 r 7

Expert witnesses to agree to be bound by code of conduct
r 1203 hdg (prev r 1202 hdg) bracketed note om R29 LA
r 1203 **orig r 1203**
renum as r 1204
pres r 1203
(prev r 1202) am SL2011-34 r 8
renum as r 1203 SL2012-24 r 7

Expert witness—immunity
r 1204 hdg (prev r 1203 hdg) bracketed note om R29 LA
r 1204 (prev r 1203) renum as r 1204 SL2012-24 r 7

Court may give directions in relation to expert evidence
r 1205 ins SL2012-24 r 8
am SL2012-43 r 7

Application—div 2.12.2
r 1210 hdg bracketed note om R29 LA

Court may direct experts to meet etc
r 1211 hdg bracketed note om R29 LA

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Expert reports

div 2.12.3 hdg **orig div 2.12.3 hdg**
om SL2012-24 r 9
pres div 2.12.3 hdg
(prev div 2.12.4 hdg) renum as div 2.12.3 hdg SL2012-24 r 10

Definitions—div 2.12.3

r 1220 hdg bracketed note om R29 LA
r 1220 om SL2012-24 r 9
def ***accompanying affidavit*** om SL2012-24 r 9
def ***appointed expert*** om SL2012-24 r 9
def ***expert*** om SL2012-24 r 9
def ***expert medical evidence*** om SL2012-24 r 9
def ***Wrongs Act*** om SL2012-24 r 9

Application for appointment of expert—Wrongs Act, s 86

r 1221 hdg bracketed note om R29 LA
r 1221 om SL2012-24 r 9

Accompanying affidavit for appointment of expert—Wrongs Act, s 86 application

r 1222 hdg bracketed note om R29 LA
r 1222 om SL2012-24 r 9

Response by other parties—Wrongs Act, s 86 application

r 1223 hdg bracketed note om R29 LA
r 1223 om SL2012-24 r 9

Selection of expert etc by court—Wrongs Act, s 86 application

r 1224 hdg bracketed note om R29 LA
r 1224 om SL2012-24 r 9

Appointed experts to be briefed etc

r 1225 hdg bracketed note om R29 LA
r 1225 om SL2012-24 r 9

Request by appointed expert for directions

r 1226 hdg bracketed note om R29 LA
r 1226 om SL2012-24 r 9

Appointed expert to report

r 1227 hdg bracketed note om R29 LA
r 1227 om SL2012-24 r 9

Expert report to be admitted in evidence

r 1228 hdg bracketed note om R29 LA
r 1228 om SL2012-24 r 9

Attendance of appointed expert

r 1229 hdg bracketed note om R29 LA
r 1229 om SL2012-24 r 9

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Expert reports
div 2.12.4 hdg renum as div 2.12.3 hdg

Application—div 2.12.3
r 1240 hdg bracketed note om R29 LA
r 1240 sub SL2012-24 r 11

Service of expert reports
r 1241 hdg bracketed note om R29 LA
r 1241 am SL2012-43 r 8; SL2015-22 rr 9-11; ss renum R41 LA

Supplementary expert reports
r 1242 hdg bracketed note om R29 LA

Expert evidence to be covered by expert report
r 1243 hdg bracketed note om R29 LA

Expert reports admissible as evidence of opinion etc
r 1244 hdg bracketed note om R29 LA

Requiring attendance of expert for cross-examination etc
r 1245 hdg bracketed note om R29 LA

Tender of expert report
r 1246 hdg bracketed note om R29 LA

Pre-trial procedures—general
div 2.13.1 hdg ins SL2012-43 r 9
om SL2015-22 r 12

Definitions—div 2.13.1
r 1300 reloc and renum as r 1321

Pre-trial procedures—classification of proceeding
r 1302 hdg reloc and renum as r 1322

Directions hearing—category C proceedings
r 1303 hdg reloc and renum as r 1323

Statement of particulars before trial—personal injury claims
r 1304 hdg bracketed note om R29 LA
r 1304 am SL2012-43 r 15, r 16; ss renum R33 LA; SL2015-22 r 13

Statement of particulars before trial—compensation to relatives in death claims
r 1305 hdg bracketed note om R29 LA
r 1305 am SL2012-43 r 17, r 18; ss renum R33 LA; SL2015-22 r 14

Certificate of readiness for trial—generally
r 1306 hdg bracketed note om R29 LA
r 1306 am SL2012-43 r 19, r 20; ss renum R33 LA; SL2013-18 r 5, r 6
om SL2015-22 r 15

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Certificate of readiness for trial—default judgment

r 1307	am SL2012-43 r 21
	om SL2015-22 r 15

Application for directions hearing—Supreme Court

r 1307A	ins SL2012-43 r 22
	om SL2015-22 r 15

Directions hearing—category A, category B and category D proceedings

r 1308 hdg	reloc and renum as r 1324

Listing hearing

r 1309 hdg	reloc and renum as r 1325

Special fixture

r 1310 hdg	reloc and renum as r 1326

Expedited trial

r 1311 hdg	bracketed note om R29 LA

Court book

r 1312 hdg	bracketed note om R29 LA
r 1312	am SL2015-22 r 16

Directions hearings and listing hearings—costs

r 1313 hdg	reloc and renum as r 1327

Pre-trial procedures—Magistrates Court

div 2.13.2 hdg	ins SL2012-43 r 26
	om SL2015-22 r 17

Application—div 2.13.2

r 1320	ins SL2012-43 r 26
	om SL2015-22 r 18

Definitions—div 2.13.1

r 1321 hdg	(prev r 1300 hdg) am SL2012-43 r 10
r 1321	(prev r 1300) am SL2012-43 r 11, r 12
	reloc and renum as r 1321 SL2012-43 r 13
	om SL2015-22 r 18

Pre-trial procedures—classification of proceeding

r 1322 hdg	(prev r 1302 hdg) bracketed note om R29 LA
r 1322	(prev r 1302) reloc and renum as r 1322 SL2012-43 r 14
	om SL2015-22 r 18

Directions hearing—category C proceedings

r 1323 hdg	(prev r 1303 hdg) bracketed note om R29 LA
r 1323	(prev r 1303) reloc and renum as r 1323 SL2012-43 r 14
	am SL2013-18 r 7
	om SL2015-22 r 18

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Directions hearing—category A, category B and category D proceedings

r 1324 hdg	(prev r 1308 hdg) bracketed note om R29 LA
r 1324	(prev r 1308) am SL2012-43 r 23 reloc and renum as r 1324 SL2012-43 r 24 om SL2015-22 r 18

Listing hearing

r 1325 hdg	(prev r 1309 hdg) bracketed note om R29 LA
r 1325	(prev r 1309) reloc and renum as r 1325 SL2012-43 r 25 am SL2015-22 r 19, r 20

Special fixture

r 1326	(prev r 1310) reloc and renum as r 1326 SL2012-43 r 25 am SL2015-22 r 61

Directions hearings and listing hearings—costs

r 1327 hdg	(prev r 1313 hdg) bracketed note om R29 LA
r 1327	(prev r 1313) reloc and renum as r 1327 SL2012-43 r 25

Directions—application

r 1400 hdg	bracketed note om R29 LA
r 1400	am SL2015-22 r 21

Directions generally

r 1401 hdg	bracketed note om R29 LA

Proceeding already being managed by court

r 1402 hdg	bracketed note om R29 LA
r 1402	am SL2012-43 r 27, r 28; SL2015-22 r 61

Decision in proceeding

r 1403 hdg	bracketed note om R29 LA

Failure to comply with direction etc

r 1404 hdg	bracketed note om R29 LA
r 1404	am SL2012-43 r 29, r 30; ss and pars renum R33 LA

Transfer of proceedings between courts

div 2.14.1A hdg	ins SL2007-16 r 10

Transfer of proceeding from Supreme Court to Magistrates Court—application

r 1430	ins SL2007-16 r 10

Transfer of proceeding from Supreme Court to Magistrates Court—procedure

r 1431	ins SL2007-16 r 10

Transfer of proceeding from Magistrates Court to Supreme Court—application

r 1432	ins SL2007-16 r 10

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Transfer of proceeding from Magistrates Court to Supreme Court—stay of proceeding
r 1433 ins SL2007-16 r 10

Removal of applications from ACAT to Supreme Court
div 2.14.1B hdg ins SL2011-17 r 10

Removal of applications from ACAT to Supreme Court—application
r 1440 ins SL2011-17 r 10

Removal of applications from ACAT to Supreme Court—procedure
r 1441 ins SL2011-17 r 10

Effect of failure to comply with rules
r 1450 hdg bracketed note om R29 LA
r 1450 am SL2015-22 r 22

Application because of failure to comply with rules
r 1451 hdg bracketed note om R29 LA

Failure to comply with order to take step
r 1452 hdg bracketed note om R29 LA
r 1452 am SL2015-22 r 23; ss renum R41 LA

Meaning of *question*—pt 2.15
r 1500 hdg bracketed note om R29 LA

Trial—defendant or plaintiff not appearing
r 1505 hdg bracketed note om R29 LA
r 1505 am SL2009-56 r 20

Trial—adjournment etc
r 1506 hdg bracketed note om R29 LA

Trial—third-party proceeding
r 1507 hdg bracketed note om R29 LA

Order of evidence and addresses
r 1508 hdg bracketed note om R29 LA

View by court
r 1509 hdg bracketed note om R29 LA

Associate etc to record hearing times
r 1510 hdg bracketed note om R29 LA

Associate to enter findings etc
r 1511 hdg bracketed note om R29 LA

Separate decisions on questions—order
r 1521 hdg bracketed note om R29 LA

Separate decisions on questions—directions
r 1522 hdg bracketed note om R29 LA

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Separate decisions on questions—decision
r 1523 hdg bracketed note om R29 LA

Assessors
r 1530 hdg bracketed note om R29 LA

Referee—referral of question etc
r 1531 hdg bracketed note om R29 LA

Referee—appointment
r 1532 hdg bracketed note om R29 LA

Referee—amendment of order referring question etc
r 1533 hdg bracketed note om R29 LA

Referee—conduct under reference
r 1534 hdg bracketed note om R29 LA
r 1534 am SL2017-17 r 8, r 58

Referee—submission of question to court
r 1535 hdg bracketed note om R29 LA

Referee—report
r 1536 hdg bracketed note om R29 LA

Referee—proceeding on report
r 1537 hdg bracketed note om R29 LA

Assessor and referee—remuneration
r 1538 hdg bracketed note om R29 LA

Assessment of damages
r 1546 hdg bracketed note om R29 LA

Assessment of damages—use of affidavit evidence
r 1547 hdg bracketed note om R29 LA

Partial judgment for damages to be assessed
r 1548 hdg bracketed note om R29 LA

Damages to time of assessment
r 1549 hdg bracketed note om R29 LA

Orders—required by nature of case
r 1600 hdg bracketed note om R29 LA

Judgment book
r 1601 hdg bracketed note om R29 LA

Judgments—several claims
r 1602 hdg bracketed note om R29 LA

Orders—set off between enforceable money orders
r 1603 hdg bracketed note om R29 LA

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Judgments—detention of goods
r 1604 hdg bracketed note om R29 LA

Orders—making and effect
r 1605 hdg bracketed note om R29 LA

Orders—shortened form
r 1605A ins SL2015-22 r 24

Orders—filing
r 1606 hdg bracketed note om R29 LA

Orders—certified duplicate
r 1607 hdg bracketed note om R29 LA

Orders—reasons
r 1608 hdg bracketed note om R29 LA

Orders—reservation of decision
r 1609 hdg bracketed note om R29 LA

Orders—time for compliance
r 1610 hdg bracketed note om R29 LA

Orders—by consent
r 1611 hdg bracketed note om R29 LA

Orders—by consent in proceeding
r 1612 hdg bracketed note om R29 LA

Orders—setting aside etc
r 1613 hdg bracketed note om R29 LA

Order dismissing proceeding—effect
r 1614 hdg bracketed note om R29 LA

Orders—joint liability
r 1615 hdg bracketed note om R29 LA

Payment into court—payment of amount paid into court under order
r 1616 hdg bracketed note om R29 LA
r 1616 sub SL2014-34 r 8

Payment into court—amount recovered by person with legal disability
r 1617 hdg bracketed note om R29 LA
r 1617 am SL2008-25 r 6, r 7
sub SL2014-34 r 9

Person with legal disability—orders about recovered amounts etc
r 1618 hdg bracketed note om R29 LA
r 1618 sub SL2014-34 r 10
am SL2016-17 r 4

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Person with mental disability—payment out to public trustee and guardian
r 1618A ins SL2016-17 r 5

Interest up to judgment
r 1619 ins SL2007-37 r 6
r 1619 sub SL2014-34 r 10

Interest after judgment
r 1620 ins SL2009-56 r 21
sub SL2014-34 r 10
am SL2015-42 r 9; SL2017-17 r 9

Judgment for interest only
r 1621 ins SL2014-34 r 10

Interest after judgment—usual order as to interest
r 1622 ins SL2014-34 r 10

Change in interest rates up to and after judgment
r 1623 ins SL2014-34 r 10

Definitions—pt 2.17
r 1700 hdg bracketed note om R29 LA
r 1700 def ***costs of the proceeding*** am SL2008-25 r 8

Costs—general provisions
r 1701 hdg bracketed note om R29 LA
r 1701 am SL2008-50 r 4

Costs—agreement about costs
r 1702 hdg bracketed note om R29 LA

Costs—order against non-party
r 1703 hdg bracketed note om R29 LA

Costs—failure to comply with subpoena etc
r 1704 hdg bracketed note om R29 LA

Costs—for issue or part of proceeding
r 1705 hdg bracketed note om R29 LA

Costs—if unnecessary to continue proceeding
r 1706 hdg bracketed note om R29 LA

Costs—proceeding removed to another court
r 1707 hdg bracketed note om R29 LA

Costs—in account
r 1708 hdg bracketed note om R29 LA

Costs—entitlement to recover
r 1720 hdg bracketed note om R29 LA

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Costs—general rule
r 1721 hdg bracketed note om R29 LA
r 1721 sub SL2008-25 r 9

Costs—solicitors' costs generally
r 1722 hdg bracketed note om R29 LA
r 1722 am SL2008-25 r 10; ss renum R10 LA; SL2011-17 r 11

Costs—*relevant amount* for Magistrates Court proceedings
r 1723 hdg bracketed note om R29 LA

Solicitors' costs—separate judgments against defendants in Magistrates Court
r 1724 hdg bracketed note om R29 LA

Solicitors' costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction
r 1725 sub SL2011-34 r 9

Costs—amendment of documents
r 1726 hdg bracketed note om R29 LA

Costs—party not interested in application
r 1727 hdg bracketed note om R29 LA

Costs—for application reserved
r 1728 hdg bracketed note om R29 LA

Costs—extending or shortening time
r 1729 hdg bracketed note om R29 LA

Costs—inquiry to find person entitled to property
r 1730 hdg bracketed note om R29 LA

Costs—assessment of receiver's costs
r 1731 hdg bracketed note om R29 LA

Costs—trustee
r 1732 hdg bracketed note om R29 LA

Costs—solicitor appointed litigation guardian
r 1733 hdg bracketed note om R29 LA

Costs—assessment costs
r 1734 hdg bracketed note om R29 LA

Costs—counsel's advice and settling documents
r 1735 hdg bracketed note om R29 LA

Costs—evidence
r 1736 hdg bracketed note om R29 LA

Costs—solicitor advocate
r 1737 hdg bracketed note om R29 LA

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Costs—retainer for counsel
r 1738 hdg bracketed note om R29 LA

Costs—counsel's fees for applications
r 1739 hdg bracketed note om R29 LA

Costs—fixed costs for winding-up application
r 1740 ins SL2008-50 r 5

Costs—fixed costs for enforcement order
r 1741 ins SL2011-34 r 10

Application—div 2.17.3
r 1750 hdg bracketed note om R29 LA

Costs—assessed on party and party basis
r 1751 hdg bracketed note om R29 LA

Costs—assessed on solicitor and client etc basis
r 1752 hdg bracketed note om R29 LA

Costs—legal practitioner's delay etc
r 1753 hdg bracketed note om R29 LA

Costs—disallowance of costs for vexatious document etc
r 1754 hdg bracketed note om R29 LA

Costs—registrar's general powers
r 1760 hdg bracketed note om R29 LA

Costs—registrar's discretion in assessing
r 1761 hdg bracketed note om R29 LA

Costs—when bill of costs to be filed etc
r 1800 hdg bracketed note om R29 LA

Costs—if costs out of fund bill to be sent to clients
r 1801 hdg bracketed note om R29 LA

Costs—content of bill of costs
r 1802 hdg bracketed note om R29 LA

Costs—failure to file and serve bill of costs
r 1803 hdg bracketed note om R29 LA

Costs—payment of disbursements
r 1804 hdg bracketed note om R29 LA

Costs—professional charges and disbursements
r 1805 hdg bracketed note om R29 LA

Costs—amendment and withdrawal of bill of costs
r 1806 hdg bracketed note om R29 LA

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Costs—notice of objection to bill of costs
r 1807 hdg bracketed note om R29 LA

Costs—assessment must be limited
r 1808 hdg bracketed note om R29 LA

Costs—default assessment if no objection to bill of costs
r 1809 hdg bracketed note om R29 LA

Costs—setting aside default assessment
r 1810 hdg bracketed note om R29 LA

Costs—offer to settle
r 1811 hdg bracketed note om R29 LA

Costs—acceptance of offer to settle
r 1812 hdg bracketed note om R29 LA

Costs—rejection of offer to settle
r 1813 hdg bracketed note om R29 LA

Costs—Calderbank offer to settle
r 1814 ins SL2010-24 r 9

Costs—attendance of parties at assessment
r 1830 hdg bracketed note om R29 LA

Costs—notice of adjournment of assessment
r 1831 hdg bracketed note om R29 LA

Costs—delay before registrar etc
r 1832 hdg bracketed note om R29 LA

Costs—set off of costs
r 1833 hdg bracketed note om R29 LA

Costs—bill of costs reduced by 15% or more
r 1834 hdg bracketed note om R29 LA

Costs—registrar's certificate of assessment
r 1835 hdg bracketed note om R29 LA

Costs—interim certificates of assessment
r 1836 hdg bracketed note om R29 LA

Application—div 2.17.7
r 1850 hdg bracketed note om R29 LA

Costs—application for reconsideration
r 1851 hdg bracketed note om R29 LA

Costs—procedure for reconsideration
r 1852 hdg bracketed note om R29 LA

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Costs—reply to objection on reconsideration
r 1853 hdg bracketed note om R29 LA

Costs—reconsideration of registrar's assessment
r 1854 hdg bracketed note om R29 LA

Costs—review by court
r 1855 hdg bracketed note om R29 LA

Security for costs—application and order
r 1900 hdg bracketed note om R29 LA

Security for costs—when court may make order
r 1901 hdg bracketed note om R29 LA

Security for costs—discretionary factors
r 1902 hdg bracketed note om R29 LA

Security for costs—way security given
r 1903 hdg bracketed note om R29 LA

Security for costs—effect of order
r 1904 hdg bracketed note om R29 LA

Security for costs—setting aside or amending order
r 1905 hdg bracketed note om R29 LA

Security for costs—finalising security
r 1906 hdg bracketed note om R29 LA

Liquidator, guardian or manager—accounts
r 1920 hdg bracketed note om R29 LA

Definitions—pt 2.18
r 2000 hdg bracketed note om R29 LA

Enforcement orders generally
r 2001 hdg bracketed note om R29 LA

Enforcement—by or against non-party
r 2003 hdg bracketed note om R29 LA

Enforcement—amount recoverable
r 2004 hdg bracketed note om R29 LA
r 2004 am SL2011-34 r 11

Enforcement—separate enforcement for costs
r 2005 hdg bracketed note om R29 LA

Enforcement—order in partnership name
r 2006 hdg bracketed note om R29 LA

Enforcement—against property of partnership
r 2007 hdg bracketed note om R29 LA

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Enforcement—against property of business
r 2008 hdg bracketed note om R29 LA

Enforcement—enforcement of Supreme Court order in Magistrates Court
r 2009 hdg bracketed note om R29 LA

Enforcement—enforcement of Magistrates Court order in Supreme Court
r 2010 hdg bracketed note om R29 LA

Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act
r 2010A ins SL2008-44 r 4
am SL2011-17 r 12

Enforcement—assessment of costs for certificate of registration
r 2010B ins SL2011-34 r 12

Enforcement—demand for compliance unnecessary
r 2011 hdg bracketed note om R29 LA

Enforcement—when leave required
r 2012 hdg bracketed note om R29 LA

Enforcement—stay
r 2013 hdg bracketed note om R29 LA

Enforcement—conditional orders
r 2014 hdg bracketed note om R29 LA

Enforcement—service of order and related information
r 2015 am SL2008-44 r 5

Enforcement—enforcement of payment directed by Energy and Water Consumer Council
r 2016 hdg sub SL2008-25 r 11
bracketed note om R29 LA
r 2016 ins SL2006-58 amdt 1.5
am SL2008-25 r 12
om SL2012-24 r 12

Enforcement orders—content and issue
r 2050 hdg bracketed note om R29 LA

Enforcement orders—application to set aside
r 2051 hdg bracketed note om R29 LA

Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers
r 2052 hdg bracketed note om R29 LA

Enforcement orders—return by enforcement officer
r 2053 hdg bracketed note om R29 LA

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Enforcement orders—priority
r 2054 hdg bracketed note om R29 LA

Enforcement orders—payment under order
r 2055 hdg bracketed note om R29 LA

Enforcement orders—orders about enforcement
r 2056 hdg bracketed note om R29 LA

Enforcement orders—consecutive and concurrent orders
r 2057 hdg bracketed note om R29 LA

Enforcement orders—deceased enforcement debtor
r 2058 hdg bracketed note om R29 LA

Enforcement hearing—application by enforcement creditor
r 2100 hdg bracketed note om R29 LA

Enforcement hearing—otherwise than on enforcement creditor's application
r 2101 hdg bracketed note om R29 LA

Enforcement hearing—limit on number of applications
r 2102 hdg bracketed note om R29 LA

Enforcement hearing—order for hearing etc
r 2103 hdg bracketed note om R29 LA

Enforcement hearing—who may be directed to attend by enforcement hearing subpoena
r 2104 hdg bracketed note om R29 LA

Enforcement hearing—service of enforcement hearing subpoena
r 2105 hdg bracketed note om R29 LA

Enforcement hearing—statement of enforcement debtor's financial position
r 2106 hdg bracketed note om R29 LA

Enforcement hearing—subpoena to other person
r 2107 hdg bracketed note om R29 LA

Enforcement hearing—examination
r 2109 hdg bracketed note om R29 LA

Enforcement hearing—enforcement hearing warrant issue
r 2110 hdg bracketed note om R29 LA
r 2110 am SL2006-58 amdt 1.6
sub SL2008-25 r 13

Enforcement hearing—enforcement hearing warrant contents etc
r 2111 hdg bracketed note om R29 LA

Enforcement hearing—orders
r 2112 hdg bracketed note om R29 LA

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Instalment order—making
r 2150 hdg bracketed note om R29 LA

Instalment order—application by enforcement debtor
r 2151 hdg bracketed note om R29 LA

Instalment order—application by enforcement creditor
r 2153 hdg bracketed note om R29 LA

Instalment order—relevant considerations
r 2154 hdg bracketed note om R29 LA

Instalment order—stay of enforcement
r 2155 hdg bracketed note om R29 LA

Instalment order—content and issue
r 2156 hdg bracketed note om R29 LA

Instalment order—instalment order agreement
r 2157 hdg bracketed note om R29 LA

Instalment order—no other enforcement while in force
r 2159 hdg bracketed note om R29 LA

Instalment order—amending, suspending or setting aside
r 2160 hdg bracketed note om R29 LA

Instalment order—ceasing to have effect other than for nonpayment
r 2161 hdg bracketed note om R29 LA

Seizure and sale order—making
r 2200 hdg bracketed note om R29 LA

Seizure and sale order—application
r 2201 hdg bracketed note om R29 LA

Seizure and sale order—additional exempt property
r 2202 hdg bracketed note om R29 LA

Seizure and sale order—entry, search and seizure powers if no consent
r 2203 hdg bracketed note om R29 LA

Seizure and sale order—notice of order
r 2205 hdg bracketed note om R29 LA

Seizure and sale order—notice of property seized
r 2206 hdg bracketed note om R29 LA

Seizure and sale order—removal etc of seized property
r 2207 hdg bracketed note om R29 LA

Seizure and sale order—application for instalment order stays sale of seized property
r 2208 hdg bracketed note om R29 LA

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Seizure and sale order—property seized not abandoned
r 2209 hdg bracketed note om R29 LA

Seizure and sale order—seizure of real property
r 2210 hdg bracketed note om R29 LA

Seizure and sale order—order of seizing and selling property
r 2212 hdg bracketed note om R29 LA

Seizure and sale order—payment before sale
r 2213 hdg bracketed note om R29 LA

Seizure and sale order—suspension etc of enforcement
r 2214 hdg bracketed note om R29 LA

Seizure and sale order—agreements to withdraw and re-enter
r 2215 hdg bracketed note om R29 LA

Seizure and sale order—nature of sale
r 2216 hdg bracketed note om R29 LA

Seizure and sale order—setting reasonable amount
r 2217 hdg bracketed note om R29 LA

Seizure and sale order—additional provisions relating to land
r 2218 am SL2008-25 r 14

Seizure and sale order—appointment of real estate agent
r 2218A ins SL2008-25 r 15

Seizure and sale order—power of entry for auction of land
r 2219 hdg bracketed note om R29 LA

Seizure and sale order—sale at best price obtainable
r 2220 hdg bracketed note om R29 LA

Seizure and sale order—advertisement of sale
r 2221 hdg bracketed note om R29 LA

Seizure and sale order—postponement of sale
r 2222 hdg bracketed note om R29 LA

Seizure and sale order—amounts received
r 2223 hdg bracketed note om R29 LA

Seizure and sale order—terms about payment
r 2224 hdg bracketed note om R29 LA

Seizure and sale order—securities held by enforcement officer
r 2225 hdg bracketed note om R29 LA

Seizure and sale order—personal property subject to conditional bill of sale
r 2226 hdg bracketed note om R29 LA

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Seizure and sale order—effect of sale of property
r 2227 hdg bracketed note om R29 LA

Seizure and sale order—effect of ending of order on completion of sale etc
r 2228 hdg bracketed note om R29 LA

Seizure and sale order—appropriation of payments towards order debt
r 2229 hdg bracketed note om R29 LA

Seizure and sale order—documents giving effect to sale
r 2230 hdg bracketed note om R29 LA

Seizure and sale order—payment to enforcement debtor
r 2231 hdg bracketed note om R29 LA
r 2231 am SL2006-58 amdt 1.7

Seizure and sale order—purchase by enforcement officer or auctioneer prohibited
r 2232 hdg bracketed note om R29 LA

Seizure and sale order—account etc
r 2233 hdg bracketed note om R29 LA

Seizure and sale order—report by enforcement officer
r 2234 hdg bracketed note om R29 LA

Seizure and sale order—order for disposal and return of property to enforcement debtor
r 2235 hdg bracketed note om R29 LA

Application—div 2.18.6
r 2300 hdg bracketed note om R29 LA

Debt redirection order—making
r 2301 hdg bracketed note om R29 LA

Debt redirection order—relevant considerations
r 2303 hdg bracketed note om R29 LA

Debt redirection order—joint funds
r 2304 hdg bracketed note om R29 LA

Debt redirection order—partnership debts
r 2305 hdg bracketed note om R29 LA

Debt redirection order—account with financial institution
r 2306 hdg bracketed note om R29 LA

Debt redirection order—claim by someone else
r 2307 hdg bracketed note om R29 LA

Debt redirection order—when debt redirected
r 2308 hdg bracketed note om R29 LA

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Debt redirection order—notice by third person to enforcement creditor
r 2309 hdg bracketed note om R29 LA

Debt redirection order—payments by third person
r 2310 hdg bracketed note om R29 LA

Debt redirection order—third person disputes liability
r 2311 hdg bracketed note om R29 LA

Debt redirection order—discharge of third person
r 2312 hdg bracketed note om R29 LA

Debt redirection order—payment to enforcement debtor despite redirection
r 2313 hdg bracketed note om R29 LA

Debt redirection order—amending, suspending or setting aside
r 2314 hdg bracketed note om R29 LA

Debt redirection order—procedure if order not complied with
r 2315 hdg bracketed note om R29 LA

Application—div 2.18.7
r 2330 hdg bracketed note om R29 LA

Regular redirection order—application of div 2.18.6
r 2331 hdg bracketed note om R29 LA

Regular redirection order—making
r 2332 hdg bracketed note om R29 LA

Regular redirection order—content
r 2333 hdg bracketed note om R29 LA

Regular redirection order—service and coming into force
r 2334 hdg bracketed note om R29 LA

Regular redirection order—financial institution to make payments etc
r 2335 hdg bracketed note om R29 LA

Regular redirection order—enforcement debtor not to defeat order
r 2336 hdg bracketed note om R29 LA

Regular redirection order—no other enforcement while in force
r 2337 hdg bracketed note om R29 LA

Regular redirection order—ceasing to have effect
r 2338 hdg bracketed note om R29 LA

Earnings redirection order—making
r 2350 hdg bracketed note om R29 LA

Earnings redirection order—relevant considerations
r 2352 hdg bracketed note om R29 LA

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Earnings redirection order—limit
r 2353 hdg bracketed note om R29 LA

Earnings redirection order—information about enforcement debtor's earnings
r 2354 hdg bracketed note om R29 LA

Earnings redirection order—content
r 2355 hdg bracketed note om R29 LA

Earnings redirection order—service and coming into force
r 2356 hdg bracketed note om R29 LA

Earnings redirection order—person served not employer
r 2357 hdg bracketed note om R29 LA

Earnings redirection order—employer to make payments etc
r 2358 hdg bracketed note om R29 LA

Earnings redirection order—no other enforcement while in force
r 2359 hdg bracketed note om R29 LA

Earnings redirection order—amending, suspending or setting aside
r 2360 hdg bracketed note om R29 LA

Earnings redirection order—ceasing to have effect
r 2361 hdg bracketed note om R29 LA

Earnings redirection order—return of excess
r 2362 hdg bracketed note om R29 LA

Earnings redirection order—record of payments
r 2363 am SL2006-58 amdt 1.8

Earnings redirection order—2 or more orders in force
r 2364 hdg bracketed note om R29 LA

Earnings redirection order—person served ceasing to be employer
r 2365 hdg bracketed note om R29 LA

Earnings redirection order—enforcement debtor changes or ceases employment
r 2366 hdg bracketed note om R29 LA

Earnings redirection order—directions
r 2367 hdg bracketed note om R29 LA

Earnings redirection order—employment protection
r 2368 hdg bracketed note om R29 LA

Earnings redirection order—procedure if order not complied with
r 2369 hdg bracketed note om R29 LA

Application—div 2.18.9
r 2400 hdg bracketed note om R29 LA

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Charging order—making
r 2401 hdg bracketed note om R29 LA

Charging order—effect
r 2403 hdg bracketed note om R29 LA

Charging order—enforcement debtor dealing with charged property
r 2404 hdg bracketed note om R29 LA

Charging order—issuer etc dealing with charged property
r 2405 hdg bracketed note om R29 LA

Charging order—application to enforce charge
r 2406 hdg bracketed note om R29 LA

Charging order—procedure against partnership property for partner's separate order debt
r 2407 hdg bracketed note om R29 LA

Enforcement orders—amounts in court
r 2420 hdg bracketed note om R29 LA

Enforcement orders—stop orders
r 2421 hdg bracketed note om R29 LA

Application—div 2.18.11
r 2430 hdg bracketed note om R29 LA

Receiver—appointment
r 2431 hdg bracketed note om R29 LA

Receiver—relevant considerations for appointment
r 2433 hdg bracketed note om R29 LA

Receiver—powers
r 2434 hdg bracketed note om R29 LA

Receiver—general provisions apply
r 2435 hdg bracketed note om R29 LA

Enforcement—orders for possession of land
r 2440 hdg bracketed note om R29 LA

Enforcement—orders for return of goods etc
r 2441 hdg bracketed note om R29 LA
r 2441 am SL2007-16 r 11

Enforcement—orders to do or not do an act
r 2442 hdg bracketed note om R29 LA
r 2442 am SL2007-16 rr 12-14

Enforcement—undertakings
r 2443 hdg bracketed note om R29 LA
r 2443 am SL2007-16 r 15, r 16

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Enforcement—failure of individual to comply with subpoena etc
r 2444 hdg bracketed note om R29 LA
r 2444 am SL2006-58 amdt 1.9

Enforcement—failure of corporation to comply with subpoena etc
r 2445 hdg bracketed note om R29 LA
r 2445 am SL2006-58 amdt 1.10

Enforcement by contempt or seizing and detaining property—preconditions
r 2446 hdg bracketed note om R29 LA
r 2446 am SL2008-25 r 16

Order for delivery of possession of land—making
r 2451 hdg bracketed note om R29 LA

Orders for delivery of possession of land—preconditions
r 2452 hdg bracketed note om R29 LA

Order for seizure and delivery of goods—making
r 2460 hdg bracketed note om R29 LA

Order for seizure and detention of property—making
r 2470 hdg bracketed note om R29 LA

Order for seizure and detention of property—preconditions
r 2471 hdg bracketed note om R29 LA

Order for seizure and detention of property—against officer of corporation
r 2472 hdg bracketed note om R29 LA

Order for seizure and detention of property—return of seized property
r 2473 hdg bracketed note om R29 LA

Contempt—application of div 2.18.16
r 2500 hdg bracketed note om R29 LA
r 2500 am SL2007-16 r 17; ss renum R7 LA; SL2010-24 r 10

Contempt—applications generally
r 2501 hdg bracketed note om R29 LA

Contempt—application by registrar
r 2502 hdg bracketed note om R29 LA

Contempt of the Australian Crime Commission
r 2502A ins SL2010-24 r 11

Contempt—arrest warrant if respondent likely to abscond etc
r 2503 hdg bracketed note om R29 LA

Contempt in face or hearing of court—alternative procedure
r 2504 hdg bracketed note om R29 LA

Contempt—arrest warrant
r 2505 hdg bracketed note om R29 LA

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Contempt—punishment
r 2506 hdg bracketed note om R29 LA

Contempt—costs
r 2507 hdg bracketed note om R29 LA

Application—div 2.18.17
r 2550 hdg bracketed note om R29 LA

Arrest warrant for defendant—application
r 2552 hdg bracketed note om R29 LA

Arrest warrant for defendant—issue
r 2553 hdg bracketed note om R29 LA

Arrest warrant for defendant—enforcement
r 2554 hdg bracketed note om R29 LA

Arrest warrant for defendant—costs of enforcement
r 2555 hdg bracketed note om R29 LA

Arrest warrant for defendant—service of warrant and claim
r 2556 hdg bracketed note om R29 LA

Arrest warrant for defendant—record of enforcement
r 2557 hdg bracketed note om R29 LA

Arrest warrant for defendant—procedure after arrest
r 2558 hdg bracketed note om R29 LA

Arrest warrant for defendant—release of defendant
r 2559 hdg bracketed note om R29 LA

Arrest warrant for defendant—court powers
r 2560 hdg bracketed note om R29 LA

Arrest warrant for defendant—failure to comply with conditions
r 2561 hdg bracketed note om R29 LA

Arrest warrant for defendant—review
r 2562 hdg bracketed note om R29 LA

Arrest warrant for defendant—restriction on further applications
r 2563 hdg bracketed note om R29 LA

Arrest warrant for defendant—costs
r 2564 hdg bracketed note om R29 LA

Interpleader—application by stakeholder
r 2600 hdg bracketed note om R29 LA

Interpleader—notice of claim to enforcement officer
r 2605 hdg bracketed note om R29 LA

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Interpleader—failure to give notice of claim
r 2606 hdg bracketed note om R29 LA

Interpleader—notice to enforcement creditor
r 2607 hdg bracketed note om R29 LA

Interpleader—admission of claim
r 2608 hdg bracketed note om R29 LA

Interpleader—enforcement officer's interpleader application
r 2609 hdg bracketed note om R29 LA

Interpleader—enforcement debtor's rights not affected
r 2610 hdg bracketed note om R29 LA

Interpleader—orders
r 2620 hdg bracketed note om R29 LA

Interpleader—summary disposal of proceeding
r 2621 hdg bracketed note om R29 LA

Interpleader—adverse claims
r 2622 hdg bracketed note om R29 LA

Interpleader—default by claimant
r 2623 hdg bracketed note om R29 LA

Interpleader—neutrality of applicant
r 2624 hdg bracketed note om R29 LA

Interpleader order—2 or more proceedings
r 2625 hdg bracketed note om R29 LA

Interpleader—trial
r 2626 hdg bracketed note om R29 LA

Interpleader—disposal of amounts in court
r 2627 hdg bracketed note om R29 LA

Trusts and estates—decision without order for administration
r 2700 hdg bracketed note om R29 LA

Trusts and estates—application not to affect powers
r 2701 hdg bracketed note om R29 LA

Trusts and estates—conduct of sale
r 2702 hdg bracketed note om R29 LA

Account—order for account
r 2721 hdg bracketed note om R29 LA

Account—orders
r 2722 hdg bracketed note om R29 LA

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Accounts—service of order etc
r 2723 hdg bracketed note om R29 LA

Accounts—form and verification
r 2724 hdg bracketed note om R29 LA

Accounts—filing and service
r 2725 hdg bracketed note om R29 LA

Accounts—challenging account
r 2726 hdg bracketed note om R29 LA

Accounts—witness
r 2727 hdg bracketed note om R29 LA

Accounts—allowances
r 2728 hdg bracketed note om R29 LA

Accounts—delay
r 2729 hdg bracketed note om R29 LA

Accounts—powers exercisable on taking account
r 2730 hdg bracketed note om R29 LA

Accounts—class interests
r 2731 hdg bracketed note om R29 LA

Accounts—reference to judicial officer
r 2732 hdg bracketed note om R29 LA
r 2732 am SL2015-22 r 25, r 61

Accounts—certificate about taking of account
r 2733 hdg bracketed note om R29 LA

Accounts—further consideration
r 2734 hdg bracketed note om R29 LA

Inquiries—procedure for inquiries
r 2740 hdg bracketed note om R29 LA

Inquiries—orders
r 2741 hdg bracketed note om R29 LA

Estate and trust accounts—order requiring examination and passing of accounts
r 2746 hdg bracketed note om R29 LA

Estate and trust accounts—compliance with order for examination and passing of accounts
r 2747 hdg bracketed note om R29 LA

Estate and trust accounts—application for commission
r 2748 hdg bracketed note om R29 LA

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Estate and trust accounts—notice of filing of accounts etc
r 2749 hdg bracketed note om R29 LA
r 2749 am SL2006-58 amdt 1.11

Estate and trust accounts—appearance of beneficiary at examination
r 2750 hdg bracketed note om R29 LA
r 2750 am SL2006-58 amdt 1.12

Estate and trust accounts—examination
r 2751 hdg bracketed note om R29 LA

Estate and trust accounts—conduct of examination
r 2752 hdg bracketed note om R29 LA

Estate and trust accounts—application for passing accounts etc
r 2753 hdg bracketed note om R29 LA

Estate and trust accounts—passing of accounts etc
r 2754 hdg bracketed note om R29 LA

Estate and trust accounts—amended or further accounts
r 2755 hdg bracketed note om R29 LA

Estate and trust accounts—renewal of objection in subsequent proceeding
r 2756 hdg bracketed note om R29 LA

Estate and trust accounts—evidence in subsequent proceeding
r 2757 hdg bracketed note om R29 LA

Estate and trust accounts—general practice to apply
r 2758 hdg bracketed note om R29 LA

Estate and trust accounts—combined executors' and trustees' account
r 2759 hdg bracketed note om R29 LA

Trustees—allowance of commission in proceeding
r 2760 hdg bracketed note om R29 LA

Power to act by solicitor
r 2800 hdg bracketed note om R29 LA

Appointment of solicitor
r 2801 hdg bracketed note om R29 LA

Change between acting personally and acting by solicitor
r 2802 hdg bracketed note om R29 LA
r 2802 am SL2017-10 r 6

Change of solicitor
r 2803 hdg bracketed note om R29 LA

Removal of solicitor by court
r 2804 hdg bracketed note om R29 LA

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Solicitor removed from roll etc
r 2805 hdg bracketed note om R29 LA

Application for leave to withdraw as solicitor
r 2806 hdg bracketed note om R29 LA

Leave to withdraw as solicitor
r 2807 hdg bracketed note om R29 LA

Effect of removal of, or leave to withdraw as, solicitor
r 2808 hdg bracketed note om R29 LA

Withdrawal of solicitor's agent
r 2809 hdg bracketed note om R29 LA

Solicitor not to act for adverse parties
r 2810 hdg bracketed note om R29 LA

Declaratory order
r 2900 hdg bracketed note om R29 LA

Copies of documents from registrar
r 2901 hdg bracketed note om R29 LA
r 2901 am SL2017-10 r 7

Searches of registers etc
r 2902 hdg bracketed note om R29 LA

Inspection of registry files
r 2903 hdg bracketed note om R29 LA
r 2903 am SL2017-10 r 8

Definitions—pt 3.1
r 3000 hdg bracketed note om R29 LA

Terms used in Administration and Probate Act
r 3001 hdg bracketed note om R29 LA
r 3001 am A2007-3 amdt 3.129

Grant of representation—application
r 3005 hdg bracketed note om R29 LA
r 3005 am SL2011-17 r 13, r 14; ss renum R26 LA; SL2016-17 r 11

Grant of representation—notice of intention to apply to be published in newspaper etc
r 3006 hdg bracketed note om R29 LA
r 3006 am SL2006-58 amdt 1.13

Grant of administration—notice of intention to apply to be served on non-applicant domestic partner or next of kin
r 3007 hdg bracketed note om R29 LA
r 3007 am SL2006-58 amdt 1.14

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Grant of administration—notice of intention of creditor to apply to be served on domestic partner and next of kin

r 3008 hdg bracketed note om R29 LA
r 3008 am SL2006-58 amdt 1.14

Grant of representation—when notice of intention to apply to be served on public trustee and guardian

r 3009 hdg bracketed note om R29 LA
am SL2016-17 r 11
r 3009 am SL2016-17 r 11

Grant of representation—supporting affidavit for application

r 3010 hdg bracketed note om R29 LA
r 3010 am SL2006-58 amdts 1.15-1.18; A2007-3 amdt 3.130; SL2014-34 r 11; SL2016-17 r 11

Grant of representation—affidavit of search

r 3011 hdg bracketed note om R29 LA

Grant of representation—proof of identity and death

r 3012 hdg bracketed note om R29 LA

Grant of representation—further evidence, documents and notices

r 3013 hdg bracketed note om R29 LA

Grant of representation—no grant to executor etc who has renounced

r 3014 hdg bracketed note om R29 LA
r 3014 sub SL2006-58 amdt 1.19

Reseal of foreign grant—application

r 3020 hdg bracketed note om R29 LA

Reseal of foreign grant—notice of intention to apply to be published in newspaper etc

r 3021 hdg bracketed note om R29 LA

Reseal of foreign grant—supporting affidavit for application

r 3022 hdg bracketed note om R29 LA

Reseal of foreign grant—affidavit of search

r 3023 hdg bracketed note om R29 LA

Grant of representation—evidence of proper attestation of will

r 3030 hdg bracketed note om R29 LA

Grant of representation—will by blind or illiterate person

r 3031 hdg bracketed note om R29 LA

Grant of representation—alterations in will

r 3032 hdg bracketed note om R29 LA

Grant of representation—documents mentioned in or attached to will

r 3033 hdg bracketed note om R29 LA

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Grant of representation—evidence of proper execution of will etc
r 3034 hdg bracketed note om R29 LA

Grant of representation—will inoperative or partly inoperative
r 3035 hdg bracketed note om R29 LA

Administration bond—requirement for bond
r 3045 hdg bracketed note om R29 LA
r 3045 am SL2016-17 r 11

Administration bond—dispensing with bond
r 3046 hdg bracketed note om R29 LA

Administration bond—affidavit of justification
r 3047 hdg bracketed note om R29 LA

Administration bond—exempt surety
r 3048 hdg bracketed note om R29 LA

Administration bond—addition or reduction after required but before given
r 3049 hdg bracketed note om R29 LA

Administration bond—addition or reduction after given
r 3050 hdg bracketed note om R29 LA

Administration bond—proceeding on bond
r 3051 hdg bracketed note om R29 LA

Administration bond—application by surety
r 3052 hdg bracketed note om R29 LA

Administration bond—reseal of foreign grant
r 3053 hdg bracketed note om R29 LA

Administration by public trustee and guardian
div 3.1.6 hdg am SL2016-17 r 11

Administration by public trustee and guardian—application
r 3055 hdg bracketed note om R29 LA
am SL2016-17 r 11
r 3055 am SL2016-17 r 11

Administration by public trustee and guardian—renunciation of probate by executors
r 3056 hdg bracketed note om R29 LA
am SL2016-17 r 11
r 3056 am SL2006-58 amdt 1.20; SL2016-17 r 11

Administration by public trustee and guardian—renunciation of letters of administration by entitled people
r 3057 hdg bracketed note om R29 LA
am SL2016-17 r 11
r 3057 am SL2006-58 amdt 1.20; SL2016-17 r 11

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Administration by public trustee and guardian—service of documents on public trustee and guardian

r 3058 hdg	bracketed note om R29 LA am SL2016-17 r 11
r 3058	am SL2016-17 r 11

Definitions—div 3.1.7

r 3065 hdg	bracketed note om R29 LA

Caveat—filing

r 3066 hdg	bracketed note om R29 LA

Caveat—service

r 3067 hdg	bracketed note om R29 LA

Caveat—period of operation

r 3068 hdg	bracketed note om R29 LA

Caveat—setting aside

r 3069 hdg	bracketed note om R29 LA

Caveat—withdrawal if no pending proceeding for grant of representation etc

r 3070 hdg	bracketed note om R29 LA

Caveat—leave to withdraw

r 3071 hdg	bracketed note om R29 LA

Caveat—effect if filed on day of grant

r 3072 hdg	bracketed note om R29 LA

Revocation of grant—urgent order before start of proceeding

r 3080 hdg	bracketed note om R29 LA

Revocation of grant—application

r 3081 hdg	bracketed note om R29 LA

Revocation of grant—orders

r 3082 hdg	bracketed note om R29 LA

Revocation of grant—return of original grant

r 3083 hdg	bracketed note om R29 LA

Definitions—div 3.1.9

r 3090 hdg	bracketed note om R29 LA

Division 3.1.9 proceeding—application for revocation

r 3093 hdg	bracketed note om R29 LA

Division 3.1.9 proceeding—affidavits

r 3094 hdg	bracketed note om R29 LA

Division 3.1.9 proceeding—affidavits of scripts

r 3095 hdg	bracketed note om R29 LA

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Division 3.1.9 proceeding—directions for notice to people with beneficial interests
r 3096 hdg bracketed note om R29 LA

Division 3.1.9 proceeding—notice of intention to intervene
r 3097 hdg bracketed note om R29 LA

Division 3.1.9 proceeding—filing of grant of representation
r 3098 hdg bracketed note om R29 LA

Administration and probate—registrar may make inquiries
r 3110 hdg bracketed note om R29 LA

Administration and probate—subpoenas
r 3111 hdg bracketed note om R29 LA

Administration and probate—evidence about domicile
r 3112 hdg bracketed note om R29 LA

Administration and probate—proof in solemn form
r 3113 hdg bracketed note om R29 LA

Failure by executor, administrator or trustee to comply with beneficiary's request etc
r 3115 hdg bracketed note om R29 LA

Grant of administration—grant to child
r 3116 hdg bracketed note om R29 LA
r 3116 am SL2016-17 r 11

Order about administration of real estate—Administration and Probate Act, s 51
r 3117 hdg bracketed note om R29 LA

Administration and probate book
r 3119 hdg bracketed note om R29 LA

Proved wills to be kept by court
r 3120 sub SL2011-17 r 15
am SL2016-17 r 11

Definitions—pt 3.2
r 3150 hdg bracketed note om R29 LA
r 3150 def ***chief executive*** am A2008-20 amdt 3.14
om SL2011-17 r 16
def ***CYP director-general*** ins SL2011-17 r 17
def ***discharging order*** am SL2010-24 r 12
def ***order for access to identifying information*** sub SL2010-24 r 13

Terms used in Adoption Act
r 3151 hdg bracketed note om R29 LA
r 3151 am SL2010-24 r 14

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References to *applicants*—div 3.2.2

r 3155 hdg	bracketed note om R29 LA
r 3155	am SL2011-17 r 18

Adoption order—application

r 3156 hdg	bracketed note om R29 LA
r 3156	am SL2011-17 r 19

Adoption order—supporting affidavit for application

r 3157 hdg	bracketed note om R29 LA
r 3157	am SL2010-24 r 16, r 17

Adoption order—documents accompanying application

r 3158 hdg	bracketed note om R29 LA
r 3158	am SL2009-56 r 22; SL2010-24 rr 18-24; SL2011-17 r 20

Adoption order—service of application on CYP director-general

r 3159 hdg	am SL2011-17 r 21
	bracketed note om R29 LA
r 3159	sub SL2006-58 amdt 1.21
	am SL2011-17 r 21

Adoption order—notice of intention to oppose

r 3160 hdg	bracketed note om R29 LA
r 3160	am SL2010-24 r 25, r 26; SL2011-17 r 22

Dispensing order—application

r 3170 hdg	bracketed note om R29 LA

Dispensing order—service of application

r 3171 hdg	bracketed note om R29 LA
r 3171	am SL2011-17 r 23

Dispensing order—notice of intention to oppose

r 3172 hdg	bracketed note om R29 LA
r 3172	am SL2011-17 r 24

Amendment order—application

r 3180 hdg	bracketed note om R29 LA
r 3180	am SL2010-24 r 27; SL2011-17 r 25

Amendment order—service of application

r 3181 hdg	bracketed note om R29 LA

Amendment order—notice of intention to oppose

r 3182 hdg	bracketed note om R29 LA

Discharging order—application

r 3190 hdg	bracketed note om R29 LA

Discharging order—service of application

r 3191 hdg	bracketed note om R29 LA
r 3191	am SL2010-24 r 28

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Discharging order—notice of intention to oppose
r 3192 hdg bracketed note om R29 LA
r 3192 am SL2010-24 r 28

Order for access to identifying information—application
r 3200 hdg bracketed note om R29 LA

Order for access to identifying information—service of application
r 3201 hdg bracketed note om R29 LA
r 3201 am SL2006-58 amdt 1.22; SL2011-17 r 26

Order for access to identifying information—notice of intention to oppose
r 3202 hdg bracketed note om R29 LA

Adoption proceedings—service of applications
r 3210 hdg bracketed note om R29 LA
r 3210 am SL2006-58 amdt 1.23; SL2011-17 r 27, r 28

Adoption proceedings—service of documents containing identifying information
r 3211 am SL2010-24 r 29

Commercial arbitration—general
div 3.3.1 hdg ins SL2014-34 r 12

Meaning of *Commercial Arbitration Act*—pt 3.3
r 3250 hdg bracketed note om R29 LA
r 3250 am SL2017-17 r 10

Terms used in Commercial Arbitration Act
r 3251 am A2007-3 amdt 3.131
sub SL2017-17 r 11

Commercial arbitration—application
r 3252 hdg bracketed note om R29 LA

Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 34A
r 3253 hdg bracketed note om R29 LA
r 3253 sub SL2017-17 r 12

Commercial arbitration—appeal under Commercial Arbitration Act, s 38
r 3254 hdg bracketed note om R29 LA
r 3254 om SL2017-17 r 13

Commercial arbitration—application under Commercial Arbitration Act, s 27J
r 3255 hdg bracketed note om R29 LA
r 3255 sub SL2017-17 r 14

Commercial arbitration—application for order under Commercial Arbitration Act, s 34 (1)
r 3256 hdg bracketed note om R29 LA
r 3256 sub SL2017-17 r 14

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Commercial arbitration—offers of compromise

r 3257 hdg	bracketed note om R29 LA
r 3257	sub SL2014-34 r 13

Commercial arbitration—examination of witnesses

r 3258 hdg	bracketed note om R29 LA

Commercial arbitration—decision to refuse to issue interim measure

r 3259 hdg	bracketed note om R29 LA
r 3259	sub SL2017-17 r 15

Commercial arbitration—application to enforce arbitral award

r 3260 hdg	bracketed note om R29 LA
r 3260	sub SL2017-17 r 15

Commercial arbitration—evidence of arbitral award for purposes of enforcement

r 3261 hdg	bracketed note om R29 LA
r 3261	sub SL2017-17 r 15

Commercial arbitration—endorsement and service of application for enforcement

r 3262 hdg	bracketed note om R29 LA
r 3262	sub SL2017-17 r 15

Commercial arbitration—payment into court

div 3.3.2 hdg	ins SL2014-34 r 14

Commercial arbitration—payment into court

r 3263	ins SL2014-34 r 14

Payment into court—costs

r 3264	ins SL2014-34 r 14

Payment into court—bond or security

r 3265	ins SL2014-34 r 14
	am SL2017-17 r 58

Payment into court—interest up to payment

r 3266	ins SL2014-34 r 14

Payment into court—acceptance

r 3267	ins SL2014-34 r 14
	am SL2017-17 r 58

Payment into court—costs on acceptance by claimant

r 3268	ins SL2014-34 r 14
	am SL2017-17 r 58

Payment into court—payment out of remaining amount

r 3269	ins SL2014-34 r 14
	am SL2017-17 r 58

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Payment into court—nondisclosure
r 3269A ins SL2014-34 r 14
am SL2017-17 r 58

Definitions—pt 3.5
r 3300 hdg bracketed note om R29 LA

Terms used in Cross-vesting Act
r 3301 hdg bracketed note om R29 LA

Application—pt 3.5
r 3302 hdg bracketed note om R29 LA

Cross-vesting—application for transfer or removal of proceedings
r 3303 hdg bracketed note om R29 LA

Cross-vesting—application by Attorney-General
r 3304 hdg bracketed note om R29 LA

Cross-vesting—removal of proceedings
r 3305 hdg bracketed note om R29 LA

Cross-vesting—relying on jurisdiction under cross-vesting laws
r 3306 hdg bracketed note om R29 LA

Cross-vesting—service
r 3307 hdg bracketed note om R29 LA

Cross-vesting—directions
r 3308 hdg bracketed note om R29 LA

Cross-vesting—procedure following transfer of proceeding from court
r 3309 hdg bracketed note om R29 LA

Cross-vesting—procedure following transfer of proceeding to court
r 3310 hdg bracketed note om R29 LA

Cross-vesting—application of another jurisdiction's written law
r 3311 hdg bracketed note om R29 LA

Cross-vesting—application of another jurisdiction's rules of evidence and procedure
r 3312 hdg bracketed note om R29 LA

Definitions—pt 3.6
r 3350 hdg bracketed note om R29 LA

Election application etc originating application
r 3353 hdg bracketed note om R29 LA

Disputed election—deposit as security for costs
r 3355 hdg bracketed note om R29 LA

Disputed election—public notice of election application
r 3356 hdg bracketed note om R29 LA

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Disputed election—parties to proceeding
r 3357 hdg bracketed note om R29 LA

Disputed election—particulars of contested ballot papers
r 3359 hdg bracketed note om R29 LA

Disputed election—countercharges
r 3360 hdg bracketed note om R29 LA

Disputed election—time of trial etc
r 3361 hdg bracketed note om R29 LA

Disputed election—substitution of plaintiff
r 3362 hdg bracketed note om R29 LA

Disputed election—withdrawal of defendant
r 3363 hdg bracketed note om R29 LA

Disputed election—substitution of defendant
r 3364 hdg bracketed note om R29 LA

Question referred—parties to proceeding
r 3400 hdg bracketed note om R29 LA

Electoral matters—better particulars
r 3405 hdg bracketed note om R29 LA

Definitions—div 3.7.1
r 3450 hdg bracketed note om R29 LA

Foreign confiscation orders—register
r 3452 hdg bracketed note om R29 LA

Foreign confiscation orders—registration
r 3453 hdg bracketed note om R29 LA

Foreign confiscation orders—proceedings for registration
r 3454 hdg bracketed note om R29 LA

Foreign confiscation orders—when registration cancelled
r 3455 hdg bracketed note om R29 LA

Definitions—div 3.7.2
r 3460 hdg bracketed note om R29 LA

Interstate confiscation orders—register
r 3461 hdg bracketed note om R29 LA

Interstate confiscation orders—registration
r 3462 hdg bracketed note om R29 LA

Interstate confiscation orders—proceedings for registration
r 3463 hdg bracketed note om R29 LA

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Interstate confiscation orders—when registration cancelled
r 3464 hdg bracketed note om R29 LA

Interstate confiscation orders—filing of amendments etc
r 3465 hdg bracketed note om R29 LA

Definitions—pt 3.8
r 3470 hdg bracketed note om R29 LA

Terms used in Foreign Judgments Act
r 3471 hdg bracketed note om R29 LA

Application—pt 3.8
r 3472 hdg bracketed note om R29 LA

Foreign judgment—application for registration
r 3473 hdg bracketed note om R29 LA

Foreign judgment—evidence in support of application for registration
r 3474 hdg bracketed note om R29 LA
r 3474 am SL2011-33 r 5

Foreign judgment—security for costs of application for registration
r 3475 hdg bracketed note om R29 LA

Foreign judgment—order for registration
r 3476 hdg bracketed note om R29 LA

Foreign judgment—register
r 3477 hdg bracketed note om R29 LA

Foreign judgment—registration
r 3478 hdg bracketed note om R29 LA
r 3478 am SL2006-58 amdt 1.24

Foreign judgment—notice of registration
r 3479 hdg bracketed note om R29 LA

Notice of registration—affidavit of service to be filed
r 3480 hdg bracketed note om R29 LA

Registration of judgment—application to set aside
r 3481 hdg bracketed note om R29 LA

Foreign judgment—enforcement
r 3482 hdg bracketed note om R29 LA

Australian judgment—certificate for foreign registration
r 3483 hdg bracketed note om R29 LA
r 3483 am SL2006-58 amdt 1.25; ss renum R4 LA

Definitions—pt 3.9
r 3500 hdg bracketed note om R29 LA

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Application—pt 3.9
r 3501 hdg bracketed note om R29 LA

Habeas corpus—application and service
r 3504 hdg bracketed note om R29 LA
r 3504 am SL2011-34 r 13

Habeas corpus—parties
r 3505 hdg bracketed note om R29 LA

Habeas corpus—procedure on application etc
r 3506 hdg bracketed note om R29 LA

Habeas corpus—return of order
r 3507 hdg bracketed note om R29 LA

Definitions—pt 3.10
r 3550 hdg bracketed note om R29 LA

Application—pt 3.10
r 3552 hdg bracketed note om R29 LA

Judicial review—prerogative writs etc abolished
r 3553 hdg bracketed note om R29 LA

Judicial review—relief previously granted by prerogative writ etc
r 3554 hdg bracketed note om R29 LA

Judicial review—other jurisdiction not excluded
r 3555 hdg bracketed note om R29 LA

Judicial review—application etc
r 3556 hdg bracketed note om R29 LA

Judicial review—time for starting proceeding
r 3557 hdg bracketed note om R29 LA

Judicial review—declaration or injunction
r 3558 hdg bracketed note om R29 LA

Judicial review—other prerogative relief etc
r 3559 hdg bracketed note om R29 LA

Judicial review—additional orders
r 3560 hdg bracketed note om R29 LA

Judicial review—application for statutory order of review and prerogative relief etc
r 3561 hdg bracketed note om R29 LA

Judicial review—relief based on application for prerogative relief etc if application made for statutory order of review
r 3562 hdg bracketed note om R29 LA

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Judicial review—filing and serving statements
r 3563 hdg bracketed note om R29 LA
r 3563 am SL2009-32 r 5

Judicial review—stay or dismissal of application for statutory order of review on return date
r 3564 hdg bracketed note om R29 LA

Judicial review—directions on return date
r 3565 hdg bracketed note om R29 LA

Judicial review—power of the court to stay or dismiss applications in certain circumstances
r 3566 hdg bracketed note om R29 LA

Judicial review—additional requirements for certiorari order
r 3567 hdg bracketed note om R29 LA

Judicial review—no proceeding in relation to things done under mandamus order
r 3568 hdg bracketed note om R29 LA

Judicial review—disclaimer in relation to quo warranto order
r 3569 hdg bracketed note om R29 LA
r 3569 am SL2011-34 r 14

Judicial review—proceeding in relation to statement of reasons
r 3570 hdg bracketed note om R29 LA

Definitions—pt 3.11
r 3600 sub SL2014-9 r 5
def ***admission*** sub SL2014-9 r 5
def ***APLEC*** ins SL2014-9 r 5
def ***application for a costs assessment*** ins SL2011-17 r 29
sub SL2014-9 r 5
def ***application for admission*** sub SL2014-9 r 5
def ***approved academic institution*** ins SL2014-9 r 5
def ***approved course of study*** ins SL2014-9 r 5
def ***approved PLT course*** ins SL2014-9 r 5
def ***approved PLT provider*** ins SL2014-9 r 5
def ***approved subject*** ins SL2014-9 r 5
def ***LACC*** ins SL2014-9 r 5
def ***Legal Profession Act*** sub SL2014-9 r 5

Terms used in Legal Profession Act
r 3601 hdg bracketed note om R29 LA
r 3601 am SL2011-17 r 30

Academic qualifications
subdiv 3.11.2.1 hdg ins SL2014-9 r 6

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Admission—approved academic qualifications—Legal Profession Act, s 21 (5)

r 3605 hdg	bracketed note om R29 LA
r 3605	am SL2007-37 r 7
	sub SL2014-9 r 6

Approval of academic institutions

subdiv 3.11.2.2 hdg	ins SL2014-9 r 6

Approved academic institutions

r 3606 hdg	bracketed note om R29 LA
r 3606	am SL2012-24 r 13, r 14
	sub SL2014-9 r 6
	am SL2015-22 r 26

Monitoring and review

r 3607 hdg	bracketed note om R29 LA
	sub SL2014-9 r 6

Approval of course of study

subdiv 3.11.2.3 hdg	ins SL2014-9 r 6

Approval of course of study

r 3607A	ins SL2014-9 r 6

Approval of subjects

r 3607B	ins SL2014-9 r 6

Changes to approved courses of study

r 3607C	ins SL2014-9 r 6

Practical legal training

subdiv 3.11.2.4 hdg	ins SL2014-9 r 6

Practical legal training

r 3607D	ins SL2014-9 r 6

Practical legal training providers and courses

subdiv 3.11.2.5 hdg	ins SL2014-9 r 6

Approval of PLT providers

r 3607E	ins SL2014-9 r 6
	am SL2017-40 r 5

Monitoring and review of approved PLT provider

r 3607F	ins SL2014-9 r 6

Approval of training course

r 3607G	ins SL2014-9 r 6

Changes to approved courses of study

r 3607H	ins SL2014-9 r 6

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Admission—application and related matters
subdiv 3.11.2.6 hdg ins SL2014-9 r 6

Admission—application for admission
r 3608 hdg bracketed note om R29 LA
r 3608 am SL2015-22 r 27

Admission—when application must be made
r 3609 hdg bracketed note om R29 LA
r 3609 am SL2011-34 r 15

Admission—objection by bar council or law society council
r 3611 hdg bracketed note om R29 LA

Admission—appearance by bar council or law society council
r 3612 hdg bracketed note om R29 LA

Admission—applicant's duty of frankness
r 3613 hdg bracketed note om R29 LA

Admission—oath or affirmation
r 3614 sub SL2006-43 r 4

Admission—entry on local roll
r 3615 ins SL2006-43 r 4

Assessment of client costs
div 3.11.3 hdg ins SL2011-17 r 31

Application—div 3.11.3
r 3620 ins SL2011-17 r 31

Form of application
r 3621 ins SL2011-17 r 31

Application for leave to apply out of time
r 3622 ins SL2011-17 r 31

Directions
r 3623 ins SL2011-17 r 31

Response to application
r 3624 ins SL2011-17 r 31

Notice of objections to legal costs
r 3625 ins SL2011-17 r 31

Small Claims Court
pt 3.12 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—preliminary
div 3.12.1 hdg ins SL2006-58 r 4
om SL2009-32 r 6

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Definitions—pt 3.12

r 3730 ins SL2006-58 r 4
om SL2009-32 r 6
def ***conference*** ins SL2006-58 r 4
om SL2009-32 r 6
def ***court*** ins SL2006-58 r 4
om SL2009-32 r 6
def ***Magistrates Court Act*** ins SL2006-58 r 4
om SL2009-32 r 6
def ***order*** ins SL2006-58 r 4
om SL2009-32 r 6
def ***restoration order*** ins SL2006-58 r 4
om SL2009-32 r 6

Meaning of *applicant* and *respondent*—pt 3.12

r 3731 ins SL2006-58 r 4
om SL2009-32 r 6

Terms used in Magistrates Court Act

r 3732 ins SL2006-58 r 4
om SL2009-32 r 6

Application—pt 3.12

r 3733 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—application of ch 2 generally

r 3734 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—starting proceeding

div 3.12.2 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—assistance to members of public

r 3735 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—who may start and carry on a proceeding

r 3736 ins SL2006-58 r 4
am SL2007-16 r 18
om SL2009-32 r 6

Small Claims Court—originating application etc

r 3737 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—single application for each matter

r 3738 ins SL2006-58 r 4
om SL2009-32 r 6

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Small Claims Court—debt declaration
r 3739 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—claim for interest
r 3740 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—service of originating application etc
r 3741 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—response to originating application
r 3742 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—counterclaim and set-off
r 3743 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—response to nuisance application or trespass application
r 3744 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—amendment
r 3745 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—third-party proceeding
div 3.12.3 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Application of div 3.12.3—common boundary applications
r 3746 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—third-party notice
r 3747 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—service of third-party notice
r 3748 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—response to third-party notice
r 3749 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—counterclaim and set-off by third party
r 3750 ins SL2006-58 r 4
om SL2009-32 r 6

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Small Claims Court—default by third party

r 3751	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—judgment between respondent and third party

r 3752	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—admission of liability

div 3.12.4 hdg	ins SL2006-58 r 4 om SL2009-32 r 6

Application of div 3.12.4—common boundary applications

r 3753	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—admission of liability

r 3754	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—payment into court

r 3755	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—payment into court by bond

r 3756	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—no response to claim

div 3.12.5 hdg	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—default judgment

r 3757	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—striking out application

r 3758	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—disputed claim

div 3.12.6 hdg	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—disputed claim

r 3759	ins SL2006-58 r 4 om SL2009-32 r 6

Small Claims Court—conferences

div 3.12.7 hdg	ins SL2006-58 r 4 om SL2009-32 r 6

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Application—div 3.12.7
r 3760 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—setting conference date
r 3761 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—changing time or place of
r 3762 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—representation
r 3763 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—who may attend
r 3764 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—failure to attend
r 3765 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court conference—procedure
r 3766 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—inquiries
div 3.12.8 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Application—div 3.12.8
r 3767 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court inquiry—constitution
r 3768 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court inquiry—changing time or place of
r 3769 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court inquiry—representation
r 3770 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court inquiry—failure to attend
r 3771 ins SL2006-58 r 4
om SL2009-32 r 6

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Small Claims Court inquiry—procedure
r 3772 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court inquiry—investigators
r 3773 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—transfer of proceedings between courts
div 3.12.9 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Application of div 3.12.9—common boundary applications
r 3774 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—transfer of proceedings from Magistrates Court
r 3775 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—transfer of proceeding to Magistrates Court
r 3776 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—general provisions
div 3.12.10 hdg ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—applications in proceedings
r 3777 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—discontinuance of proceeding
r 3778 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—dismissal for abuse of process
r 3779 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—restoration of proceeding
r 3780 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—costs
r 3781 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court—orders
div 3.12.11 hdg ins SL2006-58 r 4
om SL2009-32 r 6

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Small Claims Court order—consent judgment
r 3782 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—counterclaim or set-off
r 3783 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—to perform work etc
r 3784 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—payment on condition work performed etc
r 3785 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—detention of goods
r 3786 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—nuisance application
r 3787 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—trespass application
r 3788 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—debt declaration
r 3789 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—joint liability
r 3790 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—notice
r 3791 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—payment of amount
r 3792 ins SL2006-58 r 4
om SL2009-32 r 6

Small Claims Court order—other orders
r 3793 ins SL2006-58 r 4
am SL2007-16 r 19
om SL2009-32 r 6

Family violence and personal violence proceedings
pt 3.12 hdg ins SL2017-10 r 9

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Family violence and personal violence proceedings—general
div 3.12.1 hdg ins SL2017-10 r 9

Terms used in Family Violence Act and Personal Violence Act
r 3800 ins SL2017-10 r 9

Application—pt 3.12
r 3801 ins SL2017-10 r 9

Rules in ch 2 disapplied
r 3802 ins SL2017-10 r 9

Other disapplied rules
r 3803 ins SL2017-10 r 9

Correction of name of respondent
r 3804 ins SL2017-40 r 6

Workers compensation
pt 3.13 hdg ins SL2006-58 r 4

Workers compensation proceedings—general
div 3.13.1 hdg ins SL2006-58 r 4

Definitions—pt 3.13
r 3900 hdg bracketed note om R29 LA
r 3900 ins SL2006-58 r 4
def ***arbitration*** ins SL2006-58 r 4
def ***case management meeting*** ins SL2006-58 r 4
om SL2015-12 r 4
def ***claim*** ins SL2006-58 r 4
def ***conciliation*** ins SL2006-58 r 4
om SL2015-12 r 4
def ***contractor*** ins SL2006-58 r 4
def ***injury notice*** ins SL2006-58 r 4
def ***prescribed scale of costs*** ins SL2006-58 r 4
def ***principal*** ins SL2006-58 r 4
def ***representative*** ins SL2006-58 r 4
def ***third-party respondent*** ins SL2006-58 r 4
def ***Workers Compensation Act*** ins SL2006-58 r 4

Terms used in Workers Compensation Act
r 3901 ins SL2006-58 r 4

Application—pt 3.13
r 3902 hdg bracketed note om R29 LA
r 3902 ins SL2006-58 r 4

Workers compensation proceedings—application of ch 2 generally
r 3903 hdg bracketed note om R29 LA
r 3903 ins SL2006-58 r 4
am SL2007-16 r 20; SL2010-51 r 5; SL2014-34 r 15, r 16

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Workers compensation—applications for arbitration

div 3.13.2 hdg	ins SL2006-58 r 4

Application for arbitration—Commercial Arbitration Act not apply

r 3904 hdg	bracketed note om R29 LA
r 3904	ins SL2006-58 r 4
	am SL2017-17 r 16

Application for arbitration—by worker

r 3905 hdg	bracketed note om R29 LA
r 3905	ins SL2006-58 r 4

Application for arbitration—by dependant or estate of deceased worker

r 3906 hdg	bracketed note om R29 LA
r 3906	ins SL2006-58 r 4

Application for arbitration—by employer or insurer

r 3907 hdg	bracketed note om R29 LA
r 3907	ins SL2006-58 r 4

Application for arbitration—when application may be filed

r 3908 hdg	bracketed note om R29 LA
r 3908	ins SL2006-58 r 4
	om SL2015-12 r 5

Application for arbitration—injury notice and medical evidence

r 3909 hdg	bracketed note om R29 LA
r 3909	ins SL2006-58 r 4

Application for arbitration—copies

r 3910 hdg	bracketed note om R29 LA
r 3910	ins SL2006-58 r 4

Application for arbitration—service on respondent

r 3911 hdg	bracketed note om R29 LA
r 3911	ins SL2006-58 r 4

Application for arbitration—service on insurer

r 3912 hdg	bracketed note om R29 LA
r 3912	ins SL2006-58 r 4

Application for arbitration—answer by respondent or third-party respondent

r 3913 hdg	bracketed note om R29 LA
r 3913	ins SL2006-58 r 4

Application for arbitration—liability and particulars subject to answer

r 3914 hdg	bracketed note om R29 LA
r 3914	ins SL2006-58 r 4

Application for arbitration—service of answer

r 3915 hdg	bracketed note om R29 LA
r 3915	ins SL2006-58 r 4

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Application for arbitration—amendment

r 3916 hdg	bracketed note om R29 LA
r 3916	ins SL2006-58 r 4

Application for arbitration—minor amendment or amendment by consent

r 3917 hdg	bracketed note om R29 LA
r 3917	ins SL2006-58 r 4

Application for arbitration—discontinuance

r 3918 hdg	bracketed note om R29 LA
r 3918	ins SL2006-58 r 4

Workers compensation—parties for arbitration

div 3.13.3 hdg	ins SL2006-58 r 4

Arbitration—necessary parties

r 3919 hdg	bracketed note om R29 LA
r 3919	ins SL2006-58 r 4

Arbitration—determination of Territory or State of connection

r 3919A	ins SL2010-51 r 6

Arbitration—including other parties

r 3920 hdg	bracketed note om R29 LA
r 3920	ins SL2006-58 r 4

Arbitration—person may apply to be included as party

r 3921 hdg	bracketed note om R29 LA
r 3921	ins SL2006-58 r 4

Arbitration—party may apply to be removed as party

r 3922 hdg	bracketed note om R29 LA
r 3922	ins SL2006-58 r 4

Arbitration—employer not respondent in certain applications by dependant or personal representative

r 3923 hdg	bracketed note om R29 LA
r 3923	ins SL2006-58 r 4

Workers compensation—representation in arbitrations

div 3.13.4 hdg	ins SL2006-58 r 4

Arbitration—party may be represented

r 3924 hdg	bracketed note om R29 LA
r 3924	ins SL2006-58 r 4

Arbitration—separate representation of employer for insurer's period on risk

r 3925	ins SL2006-58 r 4; SL2010-51 r 7, r 8

Workers compensation—listing procedure for arbitrations

div 3.13.5 hdg	ins SL2006-58 r 4
	om SL2015-12 r 6

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Arbitration listing procedure—certificate of readiness

r 3926 hdg	bracketed note om R29 LA
r 3926	ins SL2006-58 r 4
	om SL2015-12 r 6

Arbitration listing procedure—certificate of readiness not signed

r 3927 hdg	bracketed note om R29 LA
r 3927	ins SL2006-58 r 4
	om SL2015-12 r 6

Workers compensation—medical reports for arbitrations

div 3.13.6 hdg	ins SL2006-58 r 4

Arbitration—service of medical reports

r 3928 hdg	bracketed note om R29 LA
r 3928	ins SL2006-58 r 4

Arbitration—supplementary medical reports

r 3929 hdg	bracketed note om R29 LA
r 3929	ins SL2006-58 r 4

Arbitration—doctor's evidence to be covered by medical report

r 3930 hdg	bracketed note om R29 LA
r 3930	ins SL2006-58 r 4

Arbitration—medical reports admissible as evidence of opinion etc

r 3931 hdg	bracketed note om R29 LA
r 3931	ins SL2006-58 r 4

Arbitration—requiring attendance of doctor for cross-examination etc

r 3932 hdg	bracketed note om R29 LA
r 3932	ins SL2006-58 r 4

Arbitration—tender of medical report

r 3933	ins SL2006-58 r 4

Workers compensation—medical referees for arbitrations

div 3.13.7 hdg	ins SL2006-58 r 4

Arbitration—party may apply for medical referee etc

r 3934 hdg	bracketed note om R29 LA
r 3934	ins SL2006-58 r 4

Arbitration—number of medical referees

r 3935 hdg	bracketed note om R29 LA
r 3935	ins SL2006-58 r 4

Arbitration—notice of request to medical referee

r 3936 hdg	bracketed note om R29 LA
r 3936	ins SL2006-58 r 4

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Arbitration—assessment of worker by medical referee

r 3937 hdg	bracketed note om R29 LA
r 3937	ins SL2006-58 r 4

Arbitration—medical referee to review medical evidence etc

r 3938 hdg	bracketed note om R29 LA
r 3938	ins SL2006-58 r 4

Arbitration—medical referee's report

r 3939 hdg	bracketed note om R29 LA
r 3939	ins SL2006-58 r 4

Arbitration—medical referee's report to be given to parties

r 3940 hdg	bracketed note om R29 LA
r 3940	ins SL2006-58 r 4

Arbitration—court may decide claim without medical referee report

r 3941 hdg	bracketed note om R29 LA
r 3941	ins SL2006-58 r 4

Workers compensation—dispute resolution conference for arbitration

div 3.13.8 hdg	ins SL2006-58 r 4
	sub SL2015-12 r 7

Meaning of *dispute resolution conference*—div 3.13.8

r 3942 hdg	bracketed note om R29 LA
r 3942	ins SL2006-58 r 4
	sub SL2015-12 r 7

Dispute resolution conference—purpose

r 3943 hdg	bracketed note om R29 LA
r 3943	ins SL2006-58 r 4
	sub SL2015-12 r 7

Conciliator for dispute resolution conference—div 3.13.8

r 3944 hdg	bracketed note om R29 LA
r 3944	ins SL2006-58 r 4
	sub SL2015-12 r 7

Dispute resolution conference—listings etc

r 3945 hdg	bracketed note om R29 LA
r 3945	ins SL2006-58 r 4
	sub SL2015-12 r 7

Dispute resolution conference—requirement to attend

r 3946 hdg	bracketed note om R29 LA
r 3946	ins SL2006-58 r 4
	sub SL2015-12 r 7

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Dispute resolution conference—time

r 3947 hdg	bracketed note om R29 LA
r 3947	ins SL2006-58 r 4
	sub SL2015-12 r 7

Dispute resolution conference—information to be provided before conference

r 3948 hdg	bracketed note om R29 LA
r 3948	ins SL2006-58 r 4
	sub SL2015-12 r 7

Dispute resolution conference—confidentiality

r 3948A	ins SL2015-12 r 7

Dispute resolution conference—settlement must be in writing

r 3948B	ins SL2015-12 r 7

Dispute resolution conference—court orders on outcome of conference

r 3948C	ins SL2015-12 r 7

Workers compensation—conduct of arbitration

div 3.13.9 hdg	ins SL2006-58 r 4

Conduct of arbitration—date

r 3949 hdg	bracketed note om R29 LA
r 3949	ins SL2006-58 r 4

Conduct of arbitration—burden of proof on party asserting fact

r 3950 hdg	bracketed note om R29 LA
r 3950	ins SL2006-58 r 4

Conduct of arbitration—directions about third-party respondents

r 3951 hdg	bracketed note om R29 LA
r 3951	ins SL2006-58 r 4

Conduct of arbitration—directions and orders if remedy against employer and stranger

r 3952 hdg	bracketed note om R29 LA
r 3952	ins SL2006-58 r 4

Conduct of arbitration—directions generally

r 3953	ins SL2006-58 r 4

Workers compensation—submission to award and payments into court

div 3.13.10 hdg	ins SL2006-58 r 4

Arbitration—payment into court generally

r 3954 hdg	bracketed note om R29 LA
r 3954	ins SL2006-58 r 4

Arbitration—admission of liability to claim by worker

r 3955 hdg	bracketed note om R29 LA
r 3955	ins SL2006-58 r 4

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Arbitration—admission of liability to claim for deceased worker

r 3956 hdg	bracketed note om R29 LA
r 3956	ins SL2006-58 r 4

Arbitration—denial and submission to award or payment by employer

r 3957 hdg	bracketed note om R29 LA
r 3957	ins SL2006-58 r 4

Arbitration—acceptance of payment by worker

r 3958 hdg	bracketed note om R29 LA
r 3958	ins SL2006-58 r 4

Arbitration—acceptance of payment for deceased worker

r 3959 hdg	bracketed note om R29 LA
r 3959	ins SL2006-58 r 4

Arbitration—payment on worker's acceptance

r 3960 hdg	bracketed note om R29 LA
r 3960	ins SL2006-58 r 4

Arbitration—payment on dependant's etc acceptance

r 3961 hdg	bracketed note om R29 LA
r 3961	ins SL2006-58 r 4

Arbitration—no prompt acceptance of submission or payment

r 3962 hdg	bracketed note om R29 LA
r 3962	ins SL2006-58 r 4

Arbitration—award not greater than submission or payment

r 3963 hdg	bracketed note om R29 LA
r 3963	ins SL2006-58 r 4

Workers compensation—awards

div 3.13.11 hdg	ins SL2006-58 r 4

Arbitration—award

r 3964 hdg	bracketed note om R29 LA
r 3964	ins SL2006-58 r 4

Arbitration—setting aside or amending award

r 3965 hdg	bracketed note om R29 LA
r 3965	ins SL2006-58 r 4

Workers compensation—registered agreements

div 3.13.12 hdg	ins SL2006-58 r 4

Registered agreement—application for registration

r 3966 hdg	bracketed note om R29 LA
r 3966	ins SL2006-58 r 4
	am SL2007-16 r 21

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Registered agreement—application for amendment or cancellation
r 3967 hdg bracketed note om R29 LA
r 3967 ins SL2006-58 r 4

Workers compensation—costs
div 3.13.13 hdg ins SL2006-58 r 4

Workers compensation costs—generally
r 3968 hdg bracketed note om R29 LA
r 3968 ins SL2006-58 r 4

Workers compensation costs—claim against arbitration award
r 3969 hdg bracketed note om R29 LA
r 3969 ins SL2006-58 r 4

Workers compensation—appeals
div 3.13.14 hdg ins SL2006-58 r 4

Appeal—order of Supreme Court
r 3970 hdg bracketed note om R29 LA
r 3970 ins SL2006-58 r 4

Meaning of *accused person* for div 4.1.2—bail applications
r 4005 hdg bracketed note om R29 LA

Criminal proceedings—application of pt 6.8
r 4006 hdg bracketed note om R29 LA
r 4006 am SL2012-43 r 31; SL2011-33 r 6; pars renum R35 LA; SL2017-17 r 17

Criminal proceedings—service on accused person by filing if no address for service
r 4007 hdg bracketed note om R29 LA

Criminal proceedings—service if no-one found at accused person's address for service
r 4008 hdg bracketed note om R29 LA

Criminal proceedings—service of documents when unrepresented accused person in custody
r 4009 hdg bracketed note om R29 LA

Criminal proceedings—failure of individual to comply with subpoena etc
r 4020 hdg bracketed note om R29 LA
r 4020 am SL2012-43 r 32

Criminal proceedings—failure of corporation to comply with subpoena etc
r 4021 hdg bracketed note om R29 LA

Criminal proceedings—production of person in custody
r 4050 hdg bracketed note om R29 LA

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Criminal proceedings—defence response to prosecutor's opening address
r 4051 hdg bracketed note om R29 LA

Criminal proceedings—execution of documents
r 4052 hdg bracketed note om R29 LA

Criminal proceedings—inspection of registry files
r 4053 hdg bracketed note om R29 LA
am SL2017-40 r 7

Criminal proceedings—certificate of conviction
r 4054 hdg bracketed note om R29 LA

Criminal proceedings—preparation of judgments
r 4055 hdg bracketed note om R29 LA

Magistrates Court criminal proceedings—prosecution evidence in committal proceedings
div 4.2.1A hdg ins SL2008-50 r 6

Prosecution evidence to be given to accused etc—Magistrates Court Act, s 90
r 4305 ins SL2008-50 r 6

Magistrates Court order made in absence of party may be set aside—general
r 4310 hdg bracketed note om R29 LA

Magistrates Court order made in absence of defendant may be set aside—summons for prescribed offence
r 4311 hdg bracketed note om R29 LA

Magistrates Court order made in absence of party may be set aside—other offences
r 4312 hdg bracketed note om R29 LA

Magistrates Court conviction made in absence of party set aside—warrant may be set aside
r 4313 hdg bracketed note om R29 LA

Magistrates Court conviction made in absence of party set aside—hearing
r 4314 hdg bracketed note om R29 LA

Magistrates Court order made in absence of party may be set aside—application by informant
r 4315 hdg bracketed note om R29 LA

Magistrates Court witness—informant may request attendance
r 4330 hdg bracketed note om R29 LA
r 4330 sub SL2006-43 amdt 1.26

Magistrates Court witness—expenses
r 4331 hdg bracketed note om R29 LA
r 4331 ins SL2006-43 amdt 1.26

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Magistrates Court criminal proceedings—enforcement of fines

div 4.2.4 hdg ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Definitions—div 4.2.4

r 4340 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4
def ***enforcement hearing subpoena*** ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4
def ***enforcement hearing warrant*** ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4
def ***fine*** ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4
def ***fine defaulter*** ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4
def ***outstanding fine*** ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—enforcement hearing

r 4341 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—service of enforcement hearing subpoena

r 4342 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—statement of person's financial position

r 4343 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—determining capacity to pay fine

r 4344 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—enforcement hearing warrant issue

r 4345 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—orders

r 4346 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Application of pt 2.18

r 4347 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

Enforcement of fine—security for payment

r 4348 ins SL2006-58 amdt 1.27
om A2010-21 amdt 1.4

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Definitions—pt 4.3
r 4700 hdg bracketed note om R29 LA
r 4700 def ***sentence*** am A2010-2 amdt 1.2

Meaning of *criminal proceeding*—div 4.3.2
r 4705 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—notice of solicitor acting
r 4706 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—change of solicitor
r 4707 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—removal of solicitor by court
r 4708 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—solicitor removed from roll etc
r 4709 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—solicitor's instructions to act for accused person ended
r 4710 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—withdrawal of solicitor
r 4711 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—handing over depositions
r 4712 hdg bracketed note om R29 LA

Meaning of *accused person*—div 4.3.3
r 4720 hdg bracketed note om R29 LA

Supreme Court bail application in relation to accused person
r 4721 hdg bracketed note om R29 LA
r 4721 am SL2011-17 rr 32-34

Supreme Court bail application by informant
r 4722 hdg bracketed note om R29 LA

Supreme Court application for bail by unrepresented accused person
r 4723 ins SL2011-17 r 35

Prosecution application for review of bail decision
r 4724 ins SL2017-9 r 4

Application—div 4.3.4
r 4730 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—appearance of accused person
r 4731 hdg bracketed note om R29 LA
r 4731 sub SL2012-43 r 33

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Supreme Court criminal proceedings—appearance when committed for sentence

r 4732 hdg bracketed note om R29 LA
r 4732 am SL2012-43 r 34; pars renum R33 LA

Supreme Court criminal proceedings—appearance when committed for trial

r 4733 hdg bracketed note om R29 LA
r 4733 am SL2006-58 amdt 1.28; SL2011-6 s 4; A2011-20 amdt 1.1; SL2012-24 r 15; pars renum R32 LA; SL2012-43 r 35; pars renum R33 LA

Supreme Court criminal proceedings—pre-trial questionnaire

r 4734 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—completion of pre-trial questionnaire

r 4735 sub SL2011-6 s 5

Supreme Court criminal proceedings—registrar's directions hearing

r 4735A ins SL2011-6 s 5
am SL2012-43 r 36

Supreme Court criminal proceedings—arraignment

r 4736 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—pre-trial directions hearing

r 4737 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—directions

r 4738 ins SL2012-43 r 37

Supreme Court criminal proceedings—proceeding already being managed by court

r 4739 ins SL2012-43 r 37
am SL2015-22 r 61

Supreme Court criminal proceedings—application to set aside or stay proceeding

r 4750 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—application for separate trials

r 4751 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—other pre-trial applications

r 4752 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—applications under r 4750, r 4751 and r 4752

r 4753 hdg bracketed note om R29 LA

Supreme Court criminal proceedings—other provisions

div 4.3.6 hdg om SL2012-43 r 38

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Supreme Court criminal proceedings—arraignment dates

r 4780 hdg	bracketed note om R29 LA
r 4780	om SL2012-43 r 38

Forensic proceedings

pt 4.4 hdg	ins SL2012-43 r 39

Forensic proceedings—preliminary

div 4.4.1 hdg	ins SL2012-43 r 39

Definitions—pt 4.4

r 4800	ins SL2012-43 r 39
	sub SL2013-18 r 8
	def ***forensic proceeding*** ins SL2012-43 r 39
	sub SL2013-18 r 8
	def ***prescribed offender*** ins SL2013-18 r 8
	def ***serious offender*** ins SL2013-18 r 8
	def ***the Act*** ins SL2012-43 r 39
	sub SL2013-18 r 8
	def ***the Crimes Act*** ins SL2013-18 r 8

Forensic proceedings—application of applied civil rules

r 4801	ins SL2012-43 r 39

Forensic proceedings—application of applied criminal rules

r 4802	ins SL2012-43 r 39
	am SL2013-18 r 9

Forensic proceedings under the Act, pt 2.5 and the Crimes Act, pt 1D, div 5

div 4.4.2 hdg	ins SL2012-43 r 39
	sub SL2013-18 r 10

Application—div 4.4.2

r 4803	ins SL2012-43 r 39
	sub SL2013-18 r 11

Forensic proceedings—filing of application

r 4804	ins SL2012-43 r 39
	am SL2013-18 r 12

Forensic proceedings—personal service

r 4805	ins SL2012-43 r 39

Forensic proceedings under the Act, pt 2.7 and the Crimes Act, pt 1D, div 6A

div 4.4.3 hdg	ins SL2012-43 r 39
	sub SL2013-18 r 12

Application—div 4.4.3

r 4806	ins SL2012-43 r 39
	sub SL2013-18 r 13

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Forensic proceedings—application and service

r 4807	ins SL2012-43 r 39
	am SL2013-18 r 15, r 16

Forensic proceedings—general

div 4.4.4 hdg	ins SL2012-43 r 39

Forensic proceedings—application not served in time

r 4808	ins SL2012-43 r 39
	am SL2013-18 r 17, r 18

Forensic proceedings—filing and service of supporting affidavit

r 4809	ins SL2012-43 r 39

Forensic proceedings—costs

r 4810	ins SL2012-43 r 39
	am SL2013-18 r 19

Definitions—ch 5

r 5000	def ***sentence*** am A2010-2 amdt 1.3

Appellate proceedings—application of ch 2 generally

r 5001 hdg	bracketed note om R29 LA
r 5001	am SL2011-34 r 16; SL2014-34 r 17

Appeals from registrar

pt 5.2 hdg	sub SL2015-22 r 28
pt 5.2 hdg note	am SL2006-58 amdt 1.29
	sub SL2015-22 r 28

Definitions—pt 5.2

r 5010 hdg	bracketed note om R29 LA
r 5010	sub SL2015-22 r 28
	def ***appeal*** sub SL2015-22 r 28
	def ***decision*** am SL2006-58 amdt 1.30
	sub SL2015-22 r 28

Application—pt 5.2

r 5011 hdg	bracketed note om R29 LA
r 5011	am SL2006-58 amdt 1.31
	sub SL2015-22 r 28

Appeals from registrar—starting appeal

r 5012 hdg	bracketed note om R29 LA
r 5012	sub SL2015-22 r 28

Appeals from registrar—requirements for notice of appeal

r 5013 hdg	bracketed note om R29 LA
r 5013	am SL2009-56 r 23, r 24; pars renum R21 LA
	sub SL2015-22 r 28

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Appeals from registrar—time for filing notice of appeal

r 5014 hdg bracketed note om R29 LA
r 5014 sub SL2015-22 r 28

Appeals from registrar—notice of appeal to be sealed

r 5015 sub SL2015-22 r 28

Appeals from registrar—serving notice of appeal

r 5016 hdg bracketed note om R29 LA
r 5016 sub SL2015-22 r 28

Appeals from registrar—stay and reinstatement

r 5017 hdg bracketed note om R29 LA
sub SL2015-22 r 28

Definitions—pt 5.3

r 5050 hdg bracketed note om R29 LA
r 5050 def ***court or tribunal*** am SL2015-22 r 29

Application—pt 5.3

r 5051 hdg bracketed note om R29 LA
r 5051 table sub SL2009-32 r 7
table am SL2010-51 r 9; SL2011-17 r 36; SL2011-34 r 17, r 18; tems renum R29 LA; SL2014-9 r 7; SL2015-22 r 61; SL2017-10 r 10

Appeals to Supreme Court—general powers

r 5052 hdg bracketed note om R29 LA

Appeals to Supreme Court—non-publication order

r 5053 hdg bracketed note om R29 LA

Appeals to Supreme Court—stay and reinstatement

r 5054 hdg bracketed note om R29 LA

Appeals to Supreme Court—security for costs

r 5055 hdg bracketed note om R29 LA

Application—div 5.3.2

r 5070 hdg bracketed note om R29 LA
r 5070 am SL2009-32 r 8; SL2009-56 r 25

Appeals to Supreme Court—application for leave to appeal

r 5071 hdg bracketed note om R29 LA

Appeals to Supreme Court—time for filing application for leave to appeal

r 5072 hdg bracketed note om R29 LA

Appeals to Supreme Court—serving application for leave to appeal

r 5074 hdg bracketed note om R29 LA

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Appeals to Supreme Court—notice of intention to respond to application for leave to appeal
r 5075 hdg bracketed note om R29 LA

Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal
r 5076 hdg bracketed note om R29 LA

Meaning of *out of time*—div 5.3.3
r 5080 hdg bracketed note om R29 LA

Application—div 5.3.3
r 5081 hdg bracketed note om R29 LA

Appeals to Supreme Court—application for leave to appeal out of time
r 5082 hdg bracketed note om R29 LA

Appeals to Supreme Court—filing application for leave to appeal out of time
r 5083 hdg bracketed note om R29 LA

Appeals to Supreme Court—serving application for leave to appeal out of time
r 5085 hdg bracketed note om R29 LA

Appeals to Supreme Court—notice of intention to respond to application for leave to appeal out of time
r 5086 hdg bracketed note om R29 LA

Appeals to Supreme Court—time for filing etc respondent's affidavits for leave to appeal out of time
r 5087 hdg bracketed note om R29 LA

Referral of appeal to Supreme Court by ACAT appeal president—leave
div 5.3.3A hdg ins SL2009-56 r 26
om SL2010-51 r 10

Application—div 5.3.3A
r 5090 ins SL2009-56 r 26
om SL2010-51 r 10

Referral of appeal—procedure for leave
r 5091 ins SL2009-56 r 26
om SL2010-51 r 10

Referral of appeal—notice of intention to respond to application for leave to appeal
r 5092 ins SL2009-56 r 26
om SL2010-51 r 10

Referral of appeal—leave granted
r 5093 ins SL2009-56 r 26
om SL2010-51 r 10

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Referral of appeal—costs

r 5094	ins SL2009-56 r 26 om SL2010-51 r 10

Appeals to Supreme Court—starting appeal

r 5100 hdg	bracketed note om R29 LA

Appeals to Supreme Court—requirements for notice of appeal etc

r 5101 hdg	bracketed note om R29 LA
r 5101	am SL2007-16 r 22

Appeals to Supreme Court—parties to appeal

r 5102 hdg	bracketed note om R29 LA
r 5102	am SL2011-17 r 37

Appeals to Supreme Court—time for filing notice of appeal

r 5103 hdg	bracketed note om R29 LA

Appeals to Supreme Court—numbering etc of appeals

r 5105 hdg	bracketed note om R29 LA

Appeals to Supreme Court—date for settlement of appeal papers

r 5106 hdg	bracketed note om R29 LA

Appeals to Supreme Court—serving notice of appeal

r 5107 hdg	bracketed note om R29 LA

Appeals to Supreme Court—notice of intention to respond

r 5108 hdg	bracketed note om R29 LA
r 5108	am SL2009-56 r 27

Appeals to Supreme Court—respondent taken to be served by filing notice of intention to respond

r 5109 hdg	bracketed note om R29 LA

Appeals to Supreme Court—documents

r 5110 hdg	bracketed note om R29 LA
r 5110	am SL2009-32 r 9

Appeals to Supreme Court—amending notice of appeal

r 5111 hdg	bracketed note om R29 LA

Appeals to Supreme Court—cross-appeal

r 5112 hdg	bracketed note om R29 LA

Appeals to Supreme Court—application of certain rules to cross-appeals

r 5113 hdg	bracketed note om R29 LA

Appeals to Supreme Court—effect of failure to give notice of cross-appeal

r 5114 hdg	bracketed note om R29 LA

Appeals to Supreme Court—notice of contention

r 5115 hdg	bracketed note om R29 LA

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Appeals to Supreme Court—draft index of appeal papers
r 5130 hdg bracketed note om R29 LA

Appeals to Supreme Court—settlement of appeal papers
r 5131 hdg bracketed note om R29 LA

Appeals to Supreme Court—content of appeal papers
r 5132 hdg bracketed note om R29 LA

Appeals to Supreme Court—presentation of appeal papers
r 5133 hdg bracketed note om R29 LA

Appeals to Supreme Court—filing and serving appeal papers
r 5134 hdg bracketed note om R29 LA

Appeals to Supreme Court—setting appeal for hearing
r 5135 hdg bracketed note om R29 LA

Appeals to Supreme Court—changing appeal hearing date
r 5136 hdg bracketed note om R29 LA

Appeals to Supreme Court—written summary and list for appeal hearing
r 5137 hdg bracketed note om R29 LA

Appeals to Supreme Court—summaries of arguments
r 5138 hdg bracketed note om R29 LA

Appeals to Supreme Court—list of authorities, legislation and texts
r 5139 hdg bracketed note om R29 LA

Appeals to Supreme Court—absence of party
r 5140 hdg bracketed note om R29 LA
r 5140 am SL2013-18 r 20

Appeals to Supreme Court—insufficient material
r 5141 hdg bracketed note om R29 LA

Appeals to Supreme Court—abandonment of ground of appeal
r 5170 hdg bracketed note om R29 LA

Appeals to Supreme Court—discontinuance of appeal
r 5171 hdg bracketed note om R29 LA
r 5171 am SL2011-34 r 19; ss renum R29 LA

Appeals to Supreme Court—competency of appeal
r 5172 hdg bracketed note om R29 LA

Appeals to Supreme Court—costs for failure to apply for appeal to be struck out as incompetent
r 5173 hdg bracketed note om R29 LA

Appeals to Supreme Court—dismissal by consent
r 5174 hdg bracketed note om R29 LA

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Appeals to Supreme Court—consent orders
r 5175 hdg bracketed note om R29 LA

Appeals to Supreme Court—directions about appeal etc
r 5190 hdg bracketed note om R29 LA

Appeals to Supreme Court—want of prosecution of appeal
r 5191 hdg bracketed note om R29 LA

Appeals to Supreme Court—matter happening in court or tribunal appealed from
r 5192 hdg bracketed note om R29 LA

Further evidence on appeal to Supreme Court—Magistrates Court Act 1930, s 214
r 5193 hdg bracketed note om R29 LA

Appeals to Supreme Court—keeping exhibits
r 5194 hdg bracketed note om R29 LA

Definitions—pt 5.4
r 5300A ins SL2016-33 r 7
def ***practice direction*** ins SL2016-33 r 7
def ***supporting material*** ins SL2016-33 r 7

Meaning of *court*—pt 5.4
r 5300 hdg bracketed note om R29 LA
r 5300 am SL2006-58 amdt 1.32; SL2015-22 r 30

Appeals to Court of Appeal—stay and reinstatement
r 5301 hdg bracketed note om R29 LA
r 5301 am A2010-51 r 11

Appeals to Court of Appeal—security for costs
r 5302 hdg bracketed note om R29 LA

Appeals to Court of Appeal—leave to appeal from interlocutory orders
div 5.4.2 hdg sub SL2006-58 amdt 1.33

Application—div 5.4.2
r 5310 hdg bracketed note om R29 LA
r 5310 am SL2006-58 amdt 1.34, amdt 1.35; SL2015-22 r 31

Appeals to Court of Appeal—application for leave to appeal
r 5311 hdg bracketed note om R29 LA
am SL2016-33 r 8, r 9; ss renum R48 LA

Appeals to Court of Appeal—time for filing application for leave to appeal
r 5312 hdg bracketed note om R29 LA
r 5312 am SL2006-58 amdt 1.36; SL2016-33 r 10

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Appeals to Court of Appeal—serving application for leave to appeal

r 5314 hdg	bracketed note om R29 LA
r 5314	am SL2006-58 amdt 1.37; SL2016-33 r 11

Appeals to Court of Appeal—response to application for leave to appeal

r 5315 hdg	bracketed note om R29 LA
	sub SL2016-33 r 12
r 5315	am SL2016-33 r 13

Appeals to Court of Appeal—time for filing etc respondent's affidavits for leave to appeal

r 5316 hdg	bracketed note om R29 LA
r 5316	om SL2016-33 r 14

Definitions—div 5.4.3

r 5330 hdg	bracketed note om R29 LA

Application—div 5.4.3

r 5331 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—application for leave to appeal out of time

r 5332 hdg	bracketed note om R29 LA
r 5332	am SL2016-33 r 15, r 16; ss renum R48 LA

Appeals to Court of Appeal—filing application for leave to appeal out of time

r 5333 hdg	bracketed note om R29 LA
r 5333	am SL2016-33 r 17

Appeals to Court of Appeal—serving application for leave to appeal out of time

r 5335 hdg	bracketed note om R29 LA
r 5335	am SL2016-33 r 18

Appeals to Court of Appeal—response to application for leave to appeal out of time

r 5336 hdg	bracketed note om R29 LA
	sub SL2016-33 r 19
r 5336	am SL2016-33 r 20

Appeals to Court of Appeal—time for filing etc respondent's affidavits for leave to appeal out of time

r 5337 hdg	bracketed note om R29 LA
r 5337	om SL2016-33 r 21

Definitions—divs 5.4.4 to 5.4.6

r 5400 hdg	bracketed note om R29 LA

Meaning of *case summary*—div 5.4.4

r 5400A	ins SL2016-33 r 22

Application—divs 5.4.4 to 5.4.6

r 5401 hdg	bracketed note om R29 LA

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Appeals to Court of Appeal—starting appeal

r 5402 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—requirements for notice of appeal etc

r 5403 hdg	bracketed note om R29 LA
r 5403	am SL2006-58 amdt 1.38; SL2016-33 r 23; ss renum R48 LA

Appeals to Court of Appeal—parties to appeal

r 5404 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—time for filing notice of appeal and case summary

r 5405 hdg	bracketed note om R29 LA
	am SL2016-33 r 24
r 5405	am SL2016-33 r 24

Appeals to Court of Appeal——numbering etc of appeals

r 5407 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—date for settlement of appeal papers

r 5408 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—serving notice of appeal and case summary

r 5409 hdg	bracketed note om R29 LA
	sub SL2016-33 r 25
r 5409	ss renum R47 LA
	am SL2016-33 r 26, r 27

Appeals to Court of Appeal—notice of intention to respond

r 5410 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—respondent taken to be served by filing notice of intention to respond

r 5411 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—amending notice of appeal

r 5412 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—cross-appeal

r 5413 hdg	bracketed note om R29 LA
r 5413	am SL2016-33 r 28; ss renum R48 LA

Appeals to Court of Appeal—application of certain rules to cross-appeals

r 5414 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—effect of failure to give notice of cross-appeal

r 5415 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—notice of contention

r 5416 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—appeal papers and hearing

div 5.4.5 hdg	note sub SL2016-33 r 29

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Appeals to Court of Appeal—filing of things before settlement of appeal papers

r 5430 hdg	bracketed note om R29 LA
r 5430	am SL2006-58 amdt 1.39 om SL2016-33 r 30

Appeals to Court of Appeal—draft index of appeal papers

r 5431 hdg	bracketed note om R29 LA
r 5431	om SL2016-33 r 30

Appeals to Court of Appeal—settlement of appeal papers

r 5432 hdg	bracketed note om R29 LA
r 5432	am SL2016-33 r 31

Appeals to Court of Appeal—content of appeal papers

r 5433 hdg	bracketed note om R29 LA
r 5433	om SL2016-33 r 32

Appeals to Court of Appeal—presentation of appeal papers

r 5434 hdg	bracketed note om R29 LA
r 5434	om SL2016-33 r 32

Appeals to Court of Appeal—filing and serving appeal papers

r 5435 hdg	bracketed note om R29 LA
r 5435	om SL2016-33 r 32

Appeals to Court of Appeal—setting appeal for hearing

r 5436 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—changing appeal hearing date

r 5437 hdg	bracketed note om R29 LA

Appeals to Court of Appeal—written summary and list for appeal hearing

r 5438 hdg	bracketed note om R29 LA
r 5438	am SL2013-18 rr 21-23 om SL2016-33 r 32

Appeals to Court of Appeal—summaries of arguments

r 5439 hdg	bracketed note om R29 LA
r 5439	om SL2016-33 r 32

Appeals to Court of Appeal—list of authorities, legislation and texts

r 5440 hdg	bracketed note om R29 LA
r 5440	om SL2016-33 r 32

Appeals to Court of Appeal—absence of party

r 5441 hdg	bracketed note om R29 LA
r 5441	am SL2013-32 r 4

Appeals to Court of Appeal—insufficient material

r 5442 hdg	bracketed note om R29 LA

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Appeals to Court of Appeal—abandonment of ground of appeal
r 5470 hdg bracketed note om R29 LA

Appeals to Court of Appeal—discontinuance of appeal
r 5471 hdg bracketed note om R29 LA

Appeals to Court of Appeal—competency of appeal
r 5472 hdg bracketed note om R29 LA
r 5472 am SL2006-58 amdt 1.40

Appeals to Court of Appeal—costs for failure to apply for appeal to be struck out as incompetent
r 5473 hdg bracketed note om R29 LA

Appeals to Court of Appeal—dismissal by consent
r 5474 hdg bracketed note om R29 LA

Appeals to Court of Appeal—consent orders
r 5475 hdg bracketed note om R29 LA

Definitions—div 5.4.7
r 5500 hdg bracketed note om R29 LA

Application—sdiv 5.4.7.2
r 5505 hdg bracketed note om R29 LA

Appeals to Court of Appeal—application for leave to appeal out of time against conviction or sentence
r 5506 hdg bracketed note om R29 LA

Appeals to Court of Appeal—serving application for leave to appeal out of time against conviction or sentence
r 5508 hdg bracketed note om R29 LA

Appeals to Court of Appeal—response by DPP to application for leave to appeal out of time against conviction or sentence
r 5509 hdg bracketed note om R29 LA

Appeals to Court of Appeal—registrar's decision on application for leave to appeal out of time against conviction or sentencebracketed note om R29 LA
r 5510 hdg bracketed note om R29 LA

Application of div 5.4.3 to certain appeals by DPP
r 5520 hdg bracketed note om R29 LA

Appeals to Court of Appeal—treating application for leave to appeal out of time against conviction or sentence as appeal
r 5530 hdg bracketed note om R29 LA

Appeals to Court of Appeal—grounds of appeal against conviction or sentence
r 5531 hdg bracketed note om R29 LA

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Appeals to Court of Appeal—trial judge's report for appeal against conviction or sentence
r 5532 hdg bracketed note om R29 LA

Appeals to Court of Appeal—service if convicted person in custody and unrepresented
r 5533 hdg bracketed note om R29 LA

Appeals to Court of Appeal—written case and presence if convicted person appellant
r 5534 hdg bracketed note om R29 LA

Appeals to Court of Appeal—order for production of offender
r 5535 hdg bracketed note om R29 LA

Appeals to Court of Appeal—fine paid to be kept pending appeal
r 5536 hdg bracketed note om R29 LA

Appeals to Court of Appeal—solicitor's instructions to act for convicted person ended
r 5537 hdg bracketed note om R29 LA

Appeals to Court of Appeal—solicitor wants to withdraw from acting for convicted person
r 5538 hdg bracketed note om R29 LA

Appeals to Court of Appeal—notification of result of appeal against conviction etc
r 5539 hdg bracketed note om R29 LA

Appeals to Court of Appeal—power to amend proceedings in court below
r 5600 hdg bracketed note om R29 LA

Appeals to Court of Appeal—expediting appeals etc
r 5601 hdg bracketed note om R29 LA

Appeals to Court of Appeal—directions about appeal etc
r 5602 hdg bracketed note om R29 LA

Appeals to Court of Appeal—want of prosecution of appeal
r 5603 hdg bracketed note om R29 LA

When Court of Appeal may be constituted by single judge—Supreme Court Act 1933, s 37J (1) (h)
r 5604 hdg bracketed note om R29 LA

Jurisdiction of Court of Appeal that may be exercised by single judge—Supreme Court Act 1933, s 37J (3)
r 5605 hdg bracketed note om R29 LA

Appeals to Court of Appeal—further evidence on appeal
r 5606 hdg bracketed note om R29 LA

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Appeals to Court of Appeal—keeping exhibits
r 5607 hdg bracketed note om R29 LA

Meaning of *review order*—pt 5.5
r 5700 hdg bracketed note om R29 LA

Review orders—application for order
r 5701 hdg bracketed note om R29 LA

Review orders—affidavits
r 5702 hdg bracketed note om R29 LA

Review orders—service of applications
r 5703 hdg bracketed note om R29 LA

Review orders—parties
r 5704 hdg bracketed note om R29 LA

Review orders—service of review order
r 5705 hdg bracketed note om R29 LA

Review orders—notice of intention to respond to review order
r 5706 hdg bracketed note om R29 LA

Review orders—security for costs
r 5707 hdg bracketed note om R29 LA

Review orders—stay
r 5708 hdg bracketed note om R29 LA

Review orders—non-appearance of applicant
r 5709 hdg bracketed note om R29 LA

Review orders—application to revoke review order
r 5710 hdg bracketed note om R29 LA

Definitions—div 5.6.1
r 5750 hdg bracketed note om R29 LA

Reference appeals to Supreme Court—application for reference appeal
r 5751 hdg bracketed note om R29 LA

Reference appeals to Supreme Court—service of application etc for reference appeal
r 5752 hdg bracketed note om R29 LA

Reference appeals to Supreme Court—notice of intention to respond by interested party
r 5753 hdg bracketed note om R29 LA

Reference appeals to Supreme Court—discontinuance of reference appeal
r 5754 hdg bracketed note om R29 LA

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Reference appeals to Supreme Court—application of certain rules to reference appeals
r 5755 hdg bracketed note om R29 LA

Definitions—div 5.6.2
r 5770 hdg bracketed note om R29 LA

Reference appeals to Court of Appeal—application for reference appeal
r 5771 hdg bracketed note om R29 LA

Reference appeals to Court of Appeal—service of application etc for reference appeal
r 5772 hdg bracketed note om R29 LA

Reference appeals to Court of Appeal—notice of intention to respond by interested party
r 5773 hdg bracketed note om R29 LA

Reference appeals to Court of Appeal—discontinuance of reference appeal
r 5774 hdg bracketed note om R29 LA

Reference appeals to Court of Appeal—application of certain rules to reference appeals
r 5775 hdg bracketed note om R29 LA

Application—div 5.7.1
r 5800 am SL2008-25 r 17; table sub SL2009-32 r 10; SL2011-34 r 20, r 21; items renum R29 LA; SL2015-22 r 61

Definitions—div 5.7.1
r 5801 hdg bracketed note om R29 LA

Question referred to Supreme Court—form
r 5802 hdg bracketed note om R29 LA

Special case to Supreme Court—preparation and settling
r 5803 hdg bracketed note om R29 LA

Special case to Supreme Court—person with legal disability
r 5804 hdg bracketed note om R29 LA

Special case to Supreme Court—directions hearing
r 5805 hdg bracketed note om R29 LA

Special case to Supreme Court—setting down for hearing
r 5806 hdg bracketed note om R29 LA

Special case to Supreme Court—insufficient statement of case
r 5807 hdg bracketed note om R29 LA

Special case to Supreme Court—court can draw inferences
r 5808 hdg bracketed note om R29 LA

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Special case to Supreme Court—agreement about damages and costs
r 5809 hdg bracketed note om R29 LA

Definitions—div 5.7.2
r 5831 hdg bracketed note om R29 LA

Question referred to Court of Appeal—form
r 5832 hdg bracketed note om R29 LA

Special case to Court of Appeal—preparation and settling
r 5833 hdg bracketed note om R29 LA

Special case to Court of Appeal—setting down for hearing
r 5834 hdg bracketed note om R29 LA

Special case to Court of Appeal—court can draw inferences
r 5835 hdg bracketed note om R29 LA

Special case to Court of Appeal—agreement about damages and costs
r 5836 hdg bracketed note om R29 LA

Definitions—pt 5.8
r 5850 hdg bracketed note om R29 LA
r 5850 def ***appellant*** am SL2006-58 amdt 1.41

Application of pt 5.8 to div 5.6.1 etc
r 5851 hdg bracketed note om R29 LA

Written cases—when used
r 5852 hdg bracketed note om R29 LA

Written cases—appellant wants written case
r 5853 hdg bracketed note om R29 LA

Written cases—respondent wants written case
r 5854 hdg bracketed note om R29 LA

Written cases—filing etc written case for application
r 5855 hdg bracketed note om R29 LA

Written cases—filing etc written case for appeal
r 5856 hdg bracketed note om R29 LA

Written cases—form
r 5857 hdg bracketed note om R29 LA

Written cases—inspection
r 5858 hdg bracketed note om R29 LA

Application—ch 6
r 6000 am A2008-20 amdt 4.17; SL2011-17 r 38

Definitions—pt 6.2
r 6005 hdg bracketed note om R29 LA

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Application—pt 6.2
r 6006 am SL2016-17 r 6

Application in proceeding—contents
r 6007 hdg bracketed note om R29 LA
r 6007 am SL2015-22 r 32

Application in proceeding—filing and service
r 6008 hdg bracketed note om R29 LA

Application in proceeding—filing and service of supporting material
r 6009 hdg bracketed note om R29 LA

Application in proceeding—absence of party
r 6010 hdg bracketed note om R29 LA

Application in proceeding—dismissal or adjournment if application not served etc
r 6011 hdg bracketed note om R29 LA

Application in proceeding—adjournment generally
r 6012 hdg bracketed note om R29 LA

Application in proceeding—orders by consent without attendance
r 6013 hdg bracketed note om R29 LA
r 6013 sub SL2012-24 r 16

Application in proceeding—further hearing
r 6014 hdg bracketed note om R29 LA

Application in proceeding—application under r 40
r 6015 hdg bracketed note om R29 LA

Application in proceeding—oral application
r 6016 hdg bracketed note om R29 LA

Human rights proceedings
pt 6.2A hdg ins SL2012-43 r 40

Preliminary
div 6.2A.1 hdg ins SL2012-43 r 40

Terms used in Human Rights Act 2004
r 6020 ins SL2012-43 r 40

Application—pt 6.2A
r 6021 ins SL2012-43 r 40

Notice to Attorney-General and commission
div 6.2A.2 hdg ins SL2012-43 r 40

Application—div 6.2A.2
r 6030 ins SL2012-43 r 40

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Notice—human rights proceedings
r 6031 ins SL2012-43 r 40

Notice—direction by court
r 6032 ins SL2012-43 r 40

Contents of notice of human rights matter
r 6033 ins SL2012-43 r 40

Directions hearing—human rights proceedings
r 6034 ins SL2012-43 r 40

Intervention of commission
div 6.2A.3 hdg ins SL2012-43 r 40

Human rights commissioner—application for leave to intervene
r 6040 ins SL2012-43 r 40

Intervention of Attorney-General in proceedings
pt 6.2B hdg ins SL2012-43 r 40

Attorney-General—notice of intervention
r 6045 ins SL2012-43 r 40

Application—div 6.3.1
r 6100 hdg bracketed note om R29 LA

Documents—general heading style
r 6102 hdg bracketed note om R29 LA

Documents—layout etc
r 6103 hdg bracketed note om R29 LA
r 6103 am SL2017-10 r 11

Documents—use of figures
r 6105 hdg bracketed note om R29 LA

Documents—signing
r 6106 hdg bracketed note om R29 LA

Documents—alterations
r 6107 hdg bracketed note om R29 LA

Filing documents—number of copies
r 6120 hdg bracketed note om R29 LA
r 6120 am SL2017-10 r 12

How documents may be filed
r 6121 hdg bracketed note om R29 LA
r 6121 am SL2012-24 r 17; pars renum R32 LA; SL2017-17 r 18

Filing documents personally
r 6122 hdg bracketed note om R29 LA

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Filing documents by post
r 6123 hdg bracketed note om R29 LA

Filing documents by document exchange
r 6124 om SL2012-24 r 18

Practice notes about filing
r 6125 hdg bracketed note om R29 LA

Date of filing
r 6126 hdg bracketed note om R29 LA
r 6126 am SL2012-24 r 19; pars renum R32 LA; SL2017-17 r 19, r 20

Rejecting documents—noncompliance with rules etc
r 6140 hdg bracketed note om R29 LA

Rejecting documents—inconvenient address for service
r 6141 hdg bracketed note om R29 LA

Rejecting documents—abuse of process etc
r 6142 hdg bracketed note om R29 LA
r 6142 am SL2015-22 r 61

Rejecting document—registrar to give notice etc
r 6143 hdg bracketed note om R29 LA

Rejecting document—costs
r 6144 hdg bracketed note om R29 LA

Associate judge
pt 6.4 hdg sub SL2015-22 r 33

Jurisdiction exercisable by associate judge
r 6200 hdg bracketed note om R29 LA
sub SL2015-22 r 34
r 6200 am SL2006-58 amdt 1.42, amdt 1.43; SL2008-50 r 7; SL2015-22 r 35, r 36; SL2017-17 r 21

Order that jurisdiction in proceeding be exercised by judge instead of associate judge
r 6201 hdg bracketed note om R29 LA
am SL2015-22 r 61
r 6201 am SL2015-22 r 61

Associate judge referring proceeding or issue to judge
r 6202 hdg bracketed note om R29 LA
sub SL2015-22 r 37
r 6202 am SL2015-22 r 38

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Jurisdiction exercisable by registrar of Supreme Court

r 6250 hdg bracketed note om R29 LA

r 6250 am SL2007-16 r 23, r 24; A2007-28 amdt 1.1; SL2008-44 r 6; SL2009-56 r 28, r 29; pars renum R21 LA; SL2011-17 r 39; SL2012-43 rr 41-44; pars renum R33 LA; SL2014-4 r 5, r 6; pars renum R37 LA; SL2014-9 r 8; pars renum R38 LA; SL2015-22 rr 39-41; pars renum R41 LA; SL2016-17 r 7, r 8; pars renum R46 LA; SL2016-31 r 4; pars renum R47 LA; SL2017-17 r 22, r 23; pars renum R50 LA

Jurisdiction exercisable by registrar of Magistrates Court

r 6251 ins SL2007-16 r 25

am SL2007-37 r 8; SL2008-44 r 7; SL2009-11 r 4, r 5; ss, pars renum R16 LA; SL2009-56 r 30; SL2010-24 r 30; SL2011-17 r 40; pars renum R26 LA; SL2012-43 r 45; SL2013-32 r 5, r 6; pars renum R36 LA; SL2014-4 r 7; pars renum R37 LA; SL2014-9 rr 9-11; pars renum R38 LA; SL2015-12 r 8; SL2015-22 rr 42-44; pars renum R41 LA; SL2016-17 r 9; SL2016-31 r 5, r 6; pars renum R47 LA; SL2016-33 r 33; pars renum R48 LA; SL2017-10 r 13, r 14; pars renum R49 LA; SL2017-17 r 24, r 25; pars renum R50 LA; SL2017-40 r 8

Registrar's powers—postponement of hearing

r 6252 hdg bracketed note om R29 LA

r 6252 am SL2015-22 r 61

Registrar's powers—subpoenas

r 6253 hdg bracketed note om R29 LA

Order that jurisdiction in proceeding be exercised by judicial officer other than registrar

r 6254 hdg bracketed note om R29 LA

r 6254 am SL2015-22 r 61

Registrar referring proceeding or issue to judicial officer

r 6255 hdg bracketed note om R29 LA

r 6255 am SL2015-22 r 61

Appeals from registrar's orders etc

r 6256 hdg bracketed note om R29 LA

r 6256 am SL2006-58 amdt 1.44; SL2015-22 r 61; SL2017-10 r 15

Office hours

r 6300 hdg bracketed note om R29 LA

r 6300 am SL2011-17 r 41; SL2015-22 r 45

Registrar's duties

r 6301 hdg bracketed note om R29 LA

Cause book

r 6302 hdg bracketed note om R29 LA

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Registrar to keep seals
r 6303 hdg bracketed note om R29 LA
r 6303 am SL2011-17 r 42; SL2017-40 r 9

Documents—sealing and stamping
r 6304 hdg bracketed note om R29 LA

Issue of commissions
r 6305 hdg bracketed note om R29 LA

Duplicate sealed etc documents
r 6306 hdg bracketed note om R29 LA

Delegation by registrar
r 6307 hdg bracketed note om R29 LA

Time—certain days excluded in working out
r 6350 hdg bracketed note om R29 LA

Time—extending and shortening by court order
r 6351 hdg bracketed note om R29 LA

Time—fixing by court order
r 6352 hdg bracketed note om R29 LA

Application—pt 6.8
r 6400 hdg bracketed note om R29 LA
r 6400 am SL2012-43 r 46; SL2017-10 r 16; SL2017-17 r 26

Service of filed documents
r 6401 hdg bracketed note om R29 LA

How document is personally served
r 6405 hdg bracketed note om R29 LA

Application—div 6.8.3
r 6410 hdg bracketed note om R29 LA

Service on individuals generally—Magistrates Court
r 6411 hdg bracketed note om R29 LA
r 6411 am SL2007-16 r 26, r 27

Service of originating process by post—Magistrates Court
r 6412 hdg bracketed note om R29 LA

Doubtful service—Magistrates Court
r 6413 hdg bracketed note om R29 LA

Ordinary service—address for service
r 6420 hdg bracketed note om R29 LA

Service by filing
r 6421 hdg bracketed note om R29 LA

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Service on corporations—generally

r 6431 hdg	bracketed note om R29 LA
r 6431	am SL2011-34 r 22

Service of originating process on partnership

r 6433 hdg	bracketed note om R29 LA

Service on defendant operating under business name

r 6434 hdg	bracketed note om R29 LA
	sub SL2011-34 s 23
r 6434	am SL2011-34 rr 24-26

Service on children

r 6435 hdg	bracketed note om R29 LA
r 6435	am A2008-20 amdt 3.15

Service on people with mental disabilities

r 6436 hdg	bracketed note om R29 LA

Service on detainees

r 6437 hdg	bracketed note om R29 LA

Service if no-one found at party's address for service

r 6438 hdg	bracketed note om R29 LA

Service of originating application to recover unoccupied land

r 6439 hdg	bracketed note om R29 LA

Time of service at address for service

r 6450 hdg	bracketed note om R29 LA
r 6450	am SL2016-33 r 34

Substituted service

r 6460 hdg	bracketed note om R29 LA

Informal service

r 6461 hdg	bracketed note om R29 LA

Service on agent

r 6462 hdg	bracketed note om R29 LA

Service under contract

r 6463 hdg	bracketed note om R29 LA

Acceptance of service by solicitor

r 6464 hdg	bracketed note om R29 LA

Special requirements for service by fax

r 6465 hdg	bracketed note om R29 LA

Email service—other matters

r 6466 hdg	bracketed note om R29 LA

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Proof of service
r 6467 hdg bracketed note om R29 LA

Identity of person served
r 6468 hdg bracketed note om R29 LA

Change of address for service
r 6469 hdg bracketed note om R29 LA

Service of subpoenas and notices instead of subpoenas—general
div 6.8.8 hdg sub SL2009-56 r 31

Definitions—div 6.8.8
r 6480 sub SL2009-56 r 31
def ***ACT Ambulance Service*** ins SL2009-56 r 31
def ***medical expert*** ins SL2009-56 r 31
sub SL2012-43 r 47
def ***special witness*** ins SL2009-56 r 31

Subpoena—service on solicitor
r 6481 sub SL2009-56 r 31

Subpoena—service on special witness
r 6482 sub SL2009-56 r 31

Special witness—notice instead of subpoena
r 6483 sub SL2009-56 r 31

Special witness—no shortening of time for service
r 6484 ins SL2009-56 r 31

Service out of Australia
div 6.8.9 hdg note sub SL2009-32 r 11
note 3 ins SL2011-33 r 7
sub SL2017-17 r 27

Meaning of *Australia*—div 6.8.9
r 6500 hdg bracketed note om R29 LA
r 6500 sub SL2017-17 r 27

r 6501 hdg bracketed note om R29 LA
r 6501 sub SL2017-17 r 27

Service of originating process without leave
r 6502 hdg bracketed note om R29 LA
r 6502 sub SL2017-17 r 27

Service of originating process with leave
r 6503 hdg bracketed note om R29 LA
r 6503 sub SL2017-17 r 27

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Court's discretion whether to assume jurisdiction

r 6504 hdg	bracketed note om R29 LA
r 6504	am SL2011-33 r 8
	sub SL2017-17 r 27

Notice to person served outside Australia

r 6505 hdg	bracketed note om R29 LA
r 6505	sub SL2017-17 r 27

Time for filing notice of intention to respond

r 6506 hdg	bracketed note om R29 LA
r 6506	sub SL2017-17 r 27

Leave to proceed if notice of intention to respond not filed

r 6507 hdg	bracketed note om R29 LA
r 6507	sub SL2017-17 r 27

Service of other documents outside Australia

r 6508 hdg	bracketed note om R29 LA
r 6508	sub SL2017-17 r 27

Mode of service

r 6509 hdg	bracketed note om R29 LA
r 6509	sub SL2017-17 r 27

Service outside Australia—service in convention countries

r 6510 hdg	bracketed note om R29 LA
r 6510	om SL2017-17 r 27

Service outside Australia—service in non-convention countries

r 6511 hdg	bracketed note om R29 LA
r 6511	om SL2017-17 r 27

Service outside Australia—other orders

r 6512 hdg	bracketed note om R29 LA
r 6512	om SL2017-17 r 27

Service of subpoenas in New Zealand

div 6.8.10 hdg	om SL2011-33 r 9

Application—div 6.8.10

r 6520	am SL2009-11 r 6
	om SL2011-33 r 9

Terms used in Evidence and Procedure (New Zealand) Act

r 6521 hdg	bracketed note om R29 LA
r 6521	om SL2011-33 r 9

Application for leave to serve subpoena in New Zealand

r 6522 hdg	bracketed note om R29 LA
r 6522	om SL2011-33 r 9

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Supporting affidavit—application for leave to serve subpoena in New Zealand

r 6523 hdg bracketed note om R29 LA
r 6523 om SL2011-33 r 9

Application for leave to serve subpoena in New Zealand need not be served etc

r 6524 hdg bracketed note om R29 LA
r 6524 om SL2011-33 r 9

Undertaking about paying loss or expense in complying with subpoena served in New Zealand

r 6525 hdg bracketed note om R29 LA
r 6525 om SL2011-33 r 9

Setting aside subpoena for service in New Zealand

r 6526 hdg bracketed note om R29 LA
r 6526 om SL2011-33 r 9

Noncompliance with subpoena served in New Zealand

r 6527 hdg bracketed note om R29 LA
r 6527 om SL2011-33 r 9

Letter of request from foreign tribunal—procedure

r 6540 hdg bracketed note om R29 LA

Orders for substituted service etc for div 6.8.11

r 6541 hdg bracketed note om R29 LA

Noncompliance with div 6.8.11

r 6542 hdg bracketed note om R29 LA

Service under the Hague Convention

div 6.8.12 hdg ins SL2009-32 r 12

Preliminary

sdiv 6.8.12.1 hdg ins SL2009-32 r 12

Definitions—div 6.8.12

r 6550 ins SL2009-32 r 12
def ***additional authority*** ins SL2009-32 r 12
def ***applicant*** ins SL2009-32 r 12
def ***central authority*** ins SL2009-32 r 12
def ***certificate of service*** ins SL2009-32 r 12
def ***certifying authority*** ins SL2009-32 r 12
def ***civil proceeding*** ins SL2009-32 r 12
def ***defendant*** ins SL2009-32 r 12
def ***foreign judicial document*** ins SL2009-32 r 12
def ***forwarding authority*** ins SL2009-32 r 12
def ***Hague Convention*** ins SL2009-32 r 12
def ***Hague Convention country*** ins SL2009-32 r 12
def ***initiating process*** ins SL2009-32 r 12

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def ***local judicial document*** ins SL2009-32 r 12
def ***registrar*** ins SL2009-32 r 12
def ***request for service abroad*** ins SL2009-32 r 12
def ***request for service in the ACT*** ins SL2009-32 r 12

Rules under this division prevail
r 6551 ins SL2009-32 r 12

Service abroad of local judicial documents
sdiv 6.8.12.2 hdg ins SL2009-32 r 12

Application—subdiv 6.8.12.2
r 6552 ins SL2009-32 r 12

Application for request for service abroad
r 6553 ins SL2009-32 r 12

How application to be dealt with
r 6554 ins SL2009-32 r 12

Procedure on receipt of certificate of service
r 6555 ins SL2009-32 r 12

Payment of costs
r 6556 ins SL2009-32 r 12

Evidence of service
r 6557 ins SL2009-32 r 12

Default judgment following service abroad of initiating process
sdiv 6.8.12.3 hdg ins SL2009-32 r 12

Application—subdiv 6.8.12.3
r 6558 ins SL2009-32 r 12

Restriction on power to enter default judgment if certificate of service filed
r 6559 ins SL2009-32 r 12

Restriction on power to enter default judgment if certificate of service not filed
r 6560 ins SL2009-32 r 12

Setting aside default judgment
r 6561 ins SL2009-32 r 12

Local service of foreign judicial documents
sdiv 6.8.12.4 hdg ins SL2009-32 r 12

Application—subdiv 6.8.12.4
r 6562 ins SL2009-32 r 12

Certain documents to be referred back to Attorney-General of the Commonwealth
r 6563 ins SL2009-32 r 12

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Service of foreign judicial documents etc
r 6564 ins SL2009-32 r 12

Affidavit about service
r 6565 ins SL2009-32 r 12

Definitions—pt 6.9
r 6600 hdg bracketed note om R29 LA

Issuing subpoena
r 6601 hdg bracketed note om R29 LA

Issuing subpoena to produce—originating claim
r 6601A ins SL2010-51 r 12
sub SL2011-6 s 6
am SL2015-22 r 46

Issuing subpoena to produce—originating application
r 6601B ins SL2011-6 s 6

Form of subpoena
r 6602 hdg bracketed note om R29 LA
r 6602 am SL2009-56 r 32; SL2017-17 r 28

Subpoena—leave to serve late
r 6603 sub SL2007-16 r 28
am SL2009-56 r 33

Subpoena—change of date for attendance of production
r 6603A ins SL2008-50 r 8

Setting aside subpoena or other relief
r 6604 hdg bracketed note om R29 LA

Service of subpoena
r 6605 hdg bracketed note om R29 LA
r 6605 am SL2009-56 r 34; SL2011-33 r 10

Compliance with subpoena
r 6606 hdg bracketed note om R29 LA
r 6606 am SL2008-50 r 9; SL2009-56 r 35; SL2017-17 r 29

Production of subpoenaed document etc otherwise than on attendance
r 6607 hdg bracketed note om R29 LA

Removal, return, inspection etc of subpoenaed documents and things
r 6608 hdg bracketed note om R29 LA

Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance
r 6609 hdg bracketed note om R29 LA
r 6609 am SL2008-25 r 18, r 19

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Disposal of subpoenaed documents and things produced

r 6610	sub SL2009-56 r 36 am SL2013-18 r 24, r 25; ss renum R34 LA

Costs and expenses of compliance with subpoena

r 6611 hdg	bracketed note om R29 LA

Failure to comply with subpoena—contempt of court

r 6612 hdg	bracketed note om R29 LA

Documents and things in custody of court

r 6613 hdg	bracketed note om R29 LA

Application of pt 6.9—subpoena under Commercial Arbitration Act

r 6614 hdg	bracketed note om R29 LA
r 6614	am SL2017-17 r 30, r 31

Subpoena issued by ACAT—leave to serve outside ACT

r 6615	ins SL2009-56 r 37

Way evidence given—civil proceedings

r 6700 hdg	bracketed note om R29 LA
r 6700	am SL2011-34 r 35; SL2012-24 r 20; SL2011-33 r 11, r 12; SL2015-22 r 47

Evidence on affidavit by agreement—civil proceedings

r 6701 hdg	bracketed note om R29 LA

Evidence in another civil proceeding etc

r 6702 hdg	bracketed note om R29 LA

Evidence by telephone etc

r 6703 hdg	bracketed note om R29 LA
r 6703	am SL2011-33 r 13; A2015-40 amdt 1.6, amdt 1.7

Plans, photographs, video or audio recordings and models

r 6704 hdg	bracketed note om R29 LA

Affidavit—form

r 6710 hdg	bracketed note om R29 LA
r 6710	am SL2009-32 r 13

Affidavit—contents

r 6711 hdg	bracketed note om R29 LA
r 6711	am SL2011-34 r 27

Affidavit—annexures and exhibits

r 6712 hdg	bracketed note om R29 LA
r 6712	am SL2007-37 r 9; SL2009-32 r 14

Affidavit—document included in

r 6713 hdg	bracketed note om R29 LA

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Affidavit—when may be taken
r 6714 hdg bracketed note om R29 LA

Affidavit—taking of
r 6715 hdg bracketed note om R29 LA
r 6715 am SL2011-34 r 28

Affidavit—certificate of reading or signature for person making
r 6716 hdg bracketed note om R29 LA

Affidavit—alterations in
r 6717 hdg bracketed note om R29 LA

Affidavit—filing and service
r 6718 hdg bracketed note om R29 LA

Affidavit—irregular in form
r 6719 hdg bracketed note om R29 LA

Affidavit—scandalous matter etc
r 6720 hdg bracketed note om R29 LA

Affidavit—cross-examination of maker
r 6721 hdg bracketed note om R29 LA

Affidavit—taken before party
r 6722 hdg bracketed note om R29 LA

Exchange of correspondence before making application in proceeding
div 6.10.3 hdg om SL2015-22 r 48

Definitions—div 6.10.3
r 6740 hdg bracketed note om R29 LA
r 6740 om SL2015-22 r 48
def ***applicant*** om SL2015-22 r 48
def ***nominated time*** om SL2015-22 r 48
def ***respondent*** om SL2015-22 r 48

Application—div 6.10.3
r 6741 hdg bracketed note om R29 LA
r 6741 om SL2015-22 r 48

Applicant's letter to respondent
r 6742 hdg bracketed note om R29 LA
r 6742 om SL2015-22 r 48

Respondent's reply to applicant's letter
r 6743 hdg bracketed note om R29 LA
r 6743 om SL2015-22 r 48

Applicant and respondent—additional correspondence
r 6744 hdg bracketed note om R29 LA
r 6744 om SL2015-22 r 48

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Div 6.10.3 application—making application
r 6745 hdg bracketed note om R29 LA
r 6745 om SL2015-22 r 48

Div 6.10.3 application—hearing
r 6746 hdg bracketed note om R29 LA
r 6746 om SL2015-22 r 48

Notice to produce
div 6.10.3A hdg ins SL2008-44 r 8

Notice to produce
r 6748 ins SL2008-44 r 8

Notices under Evidence Act
div 6.10.4 hdg am SL2011-34 r 35

Evidence of previous representation notice
r 6750 hdg bracketed note om R29 LA
r 6750 am SL2011-34 r 35

Objection to hearsay evidence notice—civil proceedings
r 6751 hdg bracketed note om R29 LA
r 6751 am SL2011-34 r 35

Tendency evidence notice
r 6752 hdg bracketed note om R29 LA
r 6752 am SL2011-34 r 35

Coincidence evidence notice
r 6753 hdg bracketed note om R29 LA
r 6753 am SL2011-34 r 35

Meaning of *subpoenaed document or thing*—div 6.10.5
r 6760 hdg bracketed note om R29 LA

Registrar to keep record of proceeding
r 6761 hdg bracketed note om R29 LA

Custody of exhibits after proceeding
r 6762 hdg bracketed note om R29 LA

Duty of parties to claim exhibits
r 6763 hdg bracketed note om R29 LA
r 6763 am SL2013-18 rr 26-28

Return of subpoenaed document or thing
r 6764 om SL2009-56 r 38

Requirement to give or send exhibit
r 6765 hdg bracketed note om R29 LA
r 6765 am SL2013-18 r 29

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Disposal of exhibits
r 6766 hdg bracketed note om R29 LA
r 6766 am SL2013-18 r 30, r 31

Power to allow removal of exhibits etc
r 6767 hdg bracketed note om R29 LA

Application for direction under Evidence (Miscellaneous Provisions) Act, s 20
r 6800 hdg bracketed note om R29 LA
r 6800 am SL2011-34 r 29

Directions for Evidence (Miscellaneous Provisions) Act, s 20
r 6801 hdg bracketed note om R29 LA
r 6801 am SL2011-34 r 29

Taking evidence from New Zealand by video link or telephone
div 6.10.7 hdg om SL2011-33 r 14

Terms used in Evidence and Procedure (New Zealand) Act
r 6805 hdg bracketed note om R29 LA
r 6805 om SL2011-33 r 14

Application for direction under Evidence and Procedure (New Zealand) Act, s 25
r 6806 hdg bracketed note om R29 LA
r 6806 om SL2011-33 r 14

Directions for Evidence and Procedure (New Zealand) Act, s 25
r 6807 hdg bracketed note om R29 LA
r 6807 om SL2011-33 r 14

Definitions—div 6.10.8
r 6810 hdg bracketed note om R29 LA

Effect of court directions for examination order
r 6811 hdg bracketed note om R29 LA

Application of div 6.10.8 to letter of request
r 6812 hdg bracketed note om R29 LA

Order for taking evidence otherwise than at trial
r 6813 hdg bracketed note om R29 LA

When examination order may be made
r 6814 hdg bracketed note om R29 LA

Application for examination order
r 6815 hdg bracketed note om R29 LA

Appointment of examiner
r 6816 hdg bracketed note om R29 LA

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Documents for examiner
r 6817 hdg bracketed note om R29 LA

Time and place of examination etc
r 6818 hdg bracketed note om R29 LA

Conduct of examination
r 6819 hdg bracketed note om R29 LA

Examination of additional people
r 6820 hdg bracketed note om R29 LA

Objections by party or person being examined
r 6821 hdg bracketed note om R29 LA

Recording evidence of examination
r 6822 hdg bracketed note om R29 LA

Authentication and filing of deposition of examination etc
r 6823 hdg bracketed note om R29 LA

Special report on examination
r 6824 hdg bracketed note om R29 LA

Default of witness at examination
r 6825 hdg bracketed note om R29 LA
r 6825 am SL2009-56 r 39

Costs of examination
r 6826 hdg bracketed note om R29 LA

Witness expenses for witness at examination
r 6827 hdg bracketed note om R29 LA

Admissibility of deposition of examination
r 6828 hdg bracketed note om R29 LA
r 6828 am SL2011-34 r 35

Letter of request
r 6829 hdg bracketed note om R29 LA

Use of evidence taken in examination
r 6830 hdg bracketed note om R29 LA

Use of evidence taken in an examination—subsequent proceedings
r 6831 hdg bracketed note om R29 LA

Amendment and revocation of examination orders
r 6832 hdg bracketed note om R29 LA

Exclusion of evidence in criminal proceeding
r 6833 hdg bracketed note om R29 LA

Definitions—div 6.10.9
r 6840 hdg bracketed note om R29 LA

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Application—div 6.10.9
r 6841 hdg bracketed note om R29 LA

Application for div 6.10.9 order
r 6842 hdg bracketed note om R29 LA

Order relating to taking evidence for Australian or foreign court or tribunal
r 6843 hdg bracketed note om R29 LA

Div 6.10.9 order for criminal proceeding
r 6844 hdg bracketed note om R29 LA

Appointment of examiner for div 6.10.9
r 6845 hdg bracketed note om R29 LA

Attendance by div 6.10.9 order applicant at examination
r 6846 hdg bracketed note om R29 LA

Procedure for taking evidence under div 6.10.9 order
r 6847 hdg bracketed note om R29 LA

Keeping of exhibits at div 6.10.9 examination
r 6848 hdg bracketed note om R29 LA

Certificate of order and depositions—div 6.10.9 examination
r 6849 hdg bracketed note om R29 LA

Privilege of witnesses—div 6.10.9 examination
r 6850 hdg bracketed note om R29 LA

Privilege of witnesses—unsupported claim etc for div 6.10.9 examination
r 6851 hdg bracketed note om R29 LA

Trans-Tasman proceedings
pt 6.10A hdg ins SL2011-33 r 15

Trans-Tasman proceedings—general
div 6.10A.1 hdg ins SL2011-33 r 15

Terms in Trans-Tasman Proceedings Act
r 6860 ins SL2011-33 r 15

Trans-Tasman proceedings—orders under Trans-Tasman Proceedings Act
div 6.10A.2 hdg ins SL2011-33 r 15

Trans-Tasman proceedings—originating application
r 6861 ins SL2011-33 r 15

Trans-Tasman proceedings—applications in proceedings
r 6862 ins SL2011-33 r 15

Trans-Tasman proceedings—application for interim relief
r 6863 ins SL2011-33 r 15

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Trans-Tasman proceedings—service of subpoenas in New Zealand
div 6.10A.3 hdg ins SL2011-33 r 15

Application—div 6.10A.3
r 6864 ins SL2011-33 r 15
am SL2017-10 r 17

Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand
r 6865 ins SL2011-33 r 15

Trans-Tasman proceedings—application to set aside subpoena served in New Zealand
r 6866 ins SL2011-33 r 15

Trans-Tasman proceedings—noncompliance with subpoena served in New Zealand
r 6867 ins SL2011-33 r 15

Trans-Tasman proceedings—remote appearances
div 6.10A.4 hdg ins SL2011-33 r 15

Trans-Tasman proceedings—application for order for use of audio link or audiovisual link from New Zealand
r 6868 ins SL2011-33 r 15

Trans-Tasman proceedings—enforcement of NZ judgments
div 6.10A.5 hdg ins SL2011-33 r 15

Trans-Tasman proceedings—notice of registration of NZ judgment
r 6869 ins SL2011-33 r 15
am SL2017-17 r 32

Trans-Tasman proceedings—application for extension of time to give notice of registration of NZ judgment
r 6870 ins SL2011-33 r 15

Trans-Tasman proceedings—application to set aside registration of NZ judgment
r 6871 ins SL2011-33 r 15

Trans-Tasman proceedings—application for stay of enforcement of registered NZ judgment
r 6872 ins SL2011-33 r 15

Trans-Tasman proceedings—application for extension of time to apply for stay of enforcement of registered NZ judgment
r 6873 ins SL2011-33 r 15

Mandatory order to registrar etc
r 6904 hdg bracketed note om R29 LA

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Notices must be written
r 6905 hdg bracketed note om R29 LA

Mistakes in orders or court certificates
r 6906 hdg bracketed note om R29 LA

Transitional—existing proceedings in Supreme Court on 1 July 2006
r 7000 hdg bracketed note om R29 LA

Transitional—approved forms for Supreme Court
r 7001 exp 1 January 2007 (r 7001 (4))

Transitional—application of old Magistrates Court rules to proceedings until 1 January 2007
r 7010 exp 1 January 2007 (r 7010 (4))

Expert witness code of conduct
sch 1 hdg am SL2012-24 r 21
sub SL2016-17 r 10

Application of code
sch 1, r 1.1 hdg bracketed note om R29 LA
sch 1, r 1.1 sub SL2016-17 r 10

General duty to court
sch 1, r 1.2 hdg bracketed note om R29 LA
sch 1, r 1.2 sub SL2016-17 r 10

Content of report
sch 1, r 1.3 hdg bracketed note om R29 LA
sch 1, r 1.3 sub SL2016-17 r 10

Supplementary report following change of opinion
sch 1, r 1.4 hdg bracketed note om R29 LA
sch 1, r 1.4 sub SL2016-17 r 10

Duty to comply with court's directions
sch 1, r 1.5 ins SL2016-17 r 10

Experts' conference etc
sch 1, r 1.6 ins SL2016-17 r 10

Interest up to judgment
sch 2, pt 2.1 hdg bracketed note om R29 LA

Interest up to judgment—Supreme Court
sch 2, table 2.1 am SL2010-24 r 31

Interest up to judgment after 30 June 2010—Supreme Court
sch 2, r 2.1 ins SL2010-24 r 32

Interest after judgment
sch 2, pt 2.2 hdg bracketed note om R29 LA
am SL2014-34 r 18

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Interest up to judgment—Magistrates Court
sch 2, table 2.2 am SL2010-24 r 33

Interest up to judgment after 30 June 2010—Magistrates Court
sch 2, r 2.2 ins SL2010-24 r 34

Interest after judgment—Supreme Court
sch 2, table 2.3 am SL2010-24 r 35

Interest on judgment after 30 June 2010—Supreme Court
sch 2, r 2.3 ins SL2010-24 r 36

Interest after judgment—Magistrates Court
sch 2, table 2.4 am SL2010-24 r 37

Interest on judgment after 30 June 2010—Magistrates Court
sch 2, r 2.4 ins SL2010-24 r 38

Costs amount—debts, liquidated demands, company windings-up, enforcement orders and certificates of registration
sch 3 hdg sub SL2008-50 r 10; SL2011-34 r 30; SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Claim for debt or liquidated demand
sch 3, pt 3.1 sub SL2008-50 r 10
am SL2011-17 r 43; table items renum R26 LA
sub SL2011-34 r 30; SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Default judgment
sch 3, pt 3.2 sub SL2008-50 r 10
am SL2011-17 r 44; table items renum R26 LA
sub SL2011-34 r 30; SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Company winding-up
sch 3, pt 3.3 ins SL2008-50 r 10
sub SL2011-34 r 30; SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Enforcement orders
sch 3, pt 3.4 ins SL2011-34 r 3
sub SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Certificate of registration
sch 3, pt 3.5 ins SL2011-34 r 30
sub SL2013-18 r 32; SL2014-34 r 19; SL2017-17 r 33

Costs—general care and conduct
sch 4, r 4.1 hdg bracketed note om R29 LA

Costs—registrar's discretion
sch 4, r 4.2 hdg bracketed note om R29 LA

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Costs—allowance on affidavits to include attendances
sch 4, r 4.4 hdg bracketed note om R29 LA

Costs—affidavit made by 2 or more people etc
sch 4, r 4.5 hdg bracketed note om R29 LA

Costs—documents to be served together
sch 4, r 4.6 hdg bracketed note om R29 LA

Costs—agency correspondence
sch 4, r 4.7 hdg bracketed note om R29 LA

Costs—attendance to instruct counsel
sch 4, r 4.8 hdg bracketed note om R29 LA

Costs—parties with same solicitor
sch 4, r 4.9 hdg bracketed note om R29 LA

Costs—counsel drawing and settling documents
sch 4, r 4.10 hdg bracketed note om R29 LA

Costs—premature brief
sch 4, r 4.11 hdg bracketed note om R29 LA

Costs—transitional
sch 4, r 4.12 hdg bracketed note om R29 LA
sch 4, r 4.12 sub SL2006-58 amdt 1.45; SL2008-44 r 9; SL2013-18 r 33; SL2014-34 r 20; SL2017-17 r 34

Costs—transitional
sch 4, r 4.13 ins SL2013-18 r 33
om SL2014-34 r 20

Scale of costs—items
sch 4, pt 4.2 sub SL2006-58 amdt 1.46; SL2008-44 r 10; SL2011-17 r 45 SL2013-18 r 34; SL2014-34 r 21; SL2017-17 r 35

Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Supreme Court
sch 5, pt 5.1 am SL2006-58 amdt 1.47; SL2007-16 r 29; items renum R7 LA; SL2011-17 r 46; items renum R26 LA; SL2012-24 r 22; items renum R32 LA; SL2011-33 r 16, r 17; items renum R35 LA; SL2014-34 r 22; items renum R39 LA; SL2015-22 r 49, r 50, r 61; SL2016-31 r 7

Jurisdiction related to Corporations Act exercisable by registrar of Supreme Court
sch 5, pt 5.2 am SL2007-16 r 30, r 31; items renum R7 LA; SL2007-37 r 10; items renum R9 LA; SL2008-25 rr 20-28; items renum R10 LA

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Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Magistrates Court

sch 5, pt 5.4 ins SL2007-16 r 32
items renum R7 LA
am SL2012-24 r 23; items renum R32 LA; SL2011-33 r 18; items renum R35 LA; SL2014-34 r 23; items renum R39 LA; SL2015-12 r 9; items renum R40 LA; SL2015-22 r 51; SL2016-31 r 8

Application of sch 6 and provisions of these rules

sch 6, r 1.3 am SL2008-50 r 11

Terms used in Corporations Act

sch 6, r 1.4 am SL2007-37 r 11; SL2008-25 r 29; SL2012-43 r 48

Definitions—sch 6

sch 6, r 1.5 def ***commission*** om SL2008-25 r 30
def ***Cross-Border Insolvency Act*** ins SL2008-50 r 12
def ***defendant*** sub SL2008-50 r 13
def ***Model Law*** ins SL2008-50 r 14
def ***plaintiff*** sub SL2008-50 r 15

Originating process and interlocutory process

sch 6, r 2.2 am SL2007-16 r 33

Supporting affidavits

sch 6, r 2.4 am SL2008-25 r 57

Application for order setting aside statutory demand (Corporations Act, s 459G)

sch 6, r 2.4A am SL2008-25 r 57

Service of originating process or interlocutory process and supporting affidavit

sch 6, r 2.7 am SL2007-16 r 34

Notice of certain applications to be given to ASIC

sch 6, r 2.8 hdg sub SL2008-25 r 31
sch 6, r 2.8 am SL2008-25 r 32, r 57

Intervention in proceeding by ASIC (Corporations Act, s 1330)

sch 6, r 2.10 hdg sub SL2008-25 r 33
sch 6, r 2.10 am SL2008-25 r 57

Publication of notices

sch 6, r 2.11 om SL2012-43 r 49

Meetings ordered by the court

sch 6, r 2.15 am SL2008-25 r 34

Notice of hearing (Corporations Act, s 411 (4) and s 413 (1))

sch 6, r 3.4 am SL2012-43 r 50; SL2017-17 r 36

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Copy of order approving compromise or arrangement to be lodged with ASIC
sch 6, r 3.5 hdg sub SL2008-25 r 35
sch 6, r 3.5 am SL2008-25 r 57

Notice of application for winding-up
sch 6, r 5.6 am SL2012-43 r 51; SL2017-17 r 37

Order substituting plaintiff in application for winding-up (Corporations Act, s 465B)
sch 6, r 5.10 am SL2012-43 r 52; SL2017-17 r 38

Notice of winding-up order and appointment of liquidator
sch 6, r 5.11 am SL2012-43 r 53; SL2017-17 r 39

Notice of appointment of provisional liquidator
sch 6, r 6.2 am SL2008-25 r 57; SL2012-43 r 54; SL2017-17 r 40

Resignation of liquidator (Corporations Act, s 473 (1))
sch 6, r 7.1 am SL2008-25 r 57

Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)
sch 6, r 7.2 am SL2008-25 r 57

Release of liquidator and deregistration of company (Corporations Act, s 480 (c) and (d))
sch 6, r 7.5 am SL2008-25 r 57

Report on accounts of liquidator (Corporations Act, s 481)
sch 6, r 7.7 am SL2008-25 r 57

Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488 (2))
sch 6, r 7.9 am SL2012-43 r 55; SL2017-17 r 41, r 42

Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))
sch 6, r 7.11 am SL2008-25 r 57

Remuneration of receiver (Corporations Act, s 425 (1))
sch 6, r 9.1 am SL2008-25 r 36, r 37

Determination by court of remuneration of administrator (Corporations Act, s 449E (1) (c) and (1A) (c))
sch 6, r 9.2 sub SL2008-25 r 38

Review of remuneration of administrator (Corporations Act, s 449E (2))
sch 6, r 9.2A ins SL2008-25 r 38

Remuneration of provisional liquidator (Corporations Act, s 473 (2))
sch 6, r 9.3 am SL2008-25 rr 39-42

Determination by court of liquidator's remuneration (Corporations Act, s 473 (3) (b) (ii))
sch 6, r 9.4 hdg sub SL2008-25 r 43
sch 6, r 9.4 am SL2008-25 rr 44-49

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Review of remuneration of liquidator (Corporations Act, s 473 (5) and (6) and s 504 (1))
sch 6, r 9.4A ins SL2008-25 r 50

Remuneration of special manager (Corporations Act, s 484 (2))
sch 6, r 9.5 am SL2008-25 rr 51-53

Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)
sch 6, r 11.2 am SL2008-25 r 57

Application for examination summons (Corporations Act, s 596A, s 596B)
sch 6, r 11.3 am SL2008-25 r 57

Discharge of examination summons
sch 6, r 11.5 am SL2008-25 r 57

Inspection of record or transcript of examination or investigation under Corporations Act, s 411, s 423 or s 536
sch 6, r 11.8 am SL2008-25 r 57

Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act, s 598)
sch 6, r 11.11 am SL2008-25 r 57

Warrants (Corporations Act, s 486B and pt 5.4B, div 3, subdiv B)
sch 6, pt 6.11A hdg ins SL2008-25 r 54

Arrest of person (Corporations Act, s 486B)
sch 6, r 11A.1 ins SL2008-25 r 54

Service on ASIC in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7
sch 6, r 12.1 hdg sub SL2008-25 r 55
sch 6, r 12.1 am SL2008-25 r 57

Reference to court of question of law arising in proceeding before Takeovers Panel (Corporations Act, s 659A)
sch 6, r 12.1A am SL2012-43 r 56

Notification to court if proceeding started before end of takeover bid period (Corporations Act, s 659B)
sch 6, r 12.1B ins SL2007-16 r 35

Reference to court of question of law arising at hearing of ASIC (ASIC Act, s 61)
sch 6, r 15.1 hdg sub SL2008-25 r 56
sch 6, r 15.1 am SL2008-25 r 57; SL2012-43 r 57

Proceedings under the Cross-Border Insolvency Act
sch 6, pt 6.15A hdg ins SL2008-50 r 16

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Introduction
div 6.15A.1 hdg ins SL2017-17 r 43

Application—pt 6.15A and other rules
sch 6, r 15A.1 ins SL2008-50 r 16

Terms used in Cross-Border Insolvency Act
sch 6, r 15A.2 ins SL2008-50 r 16
am SL2017-17 r 44, r 45

Recognition of a foreign proceeding
div 6.15A.2 hdg ins SL2017-17 r 46

Application for recognition
sch 6, r 15A.3 ins SL2008-50 r 16

Application for provisional relief under Model Law, art 19
sch 6, r 15A.4 ins SL2008-50 r 16

Liquidator's consent to act
sch 6 r 15A.5 hdg sub SL2017-17 r 47
sch 6, r 15A.5 ins SL2008-50 r 16
sub SL2010-24 r 39
am SL2017-17 r 48

Notice of filing application for recognition
sch 6, r 15A.6 ins SL2008-50 r 16
am SL2012-43 r 58, r 59

Notice of order for recognition, withdrawal etc
sch 6, r 15A.7 ins SL2008-50 r 16
am SL2012-43 rr 60-63

Relief after recognition
sch 6, r 15A.8 ins SL2008-50 r 16

Application to modify or terminate order for recognition or other relief
sch 6, r 15A.9 ins SL2008-50 r 16
am SL2012-43 r 64, r 65

Cooperation with foreign courts and representatives
div 6.15A.3 hdg ins SL2017-17 r 49

Cooperation involving court to be under coordination agreement
r 15A.10 ins SL2017-17 r 49

Application for approval of coordination agreement
r 15A.11 ins SL2017-17 r 49

Appointment of independent intermediary
r 15A.12 ins SL2017-17 r 49

Concurrent proceedings
div 6.15A.4 hdg ins SL2017-17 r 49

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Starting proceeding after recognition of a foreign main proceeding
r 15A.13 ins SL2017-17 r 49

General
div 6.15A.5 hdg ins SL2017-17 r 49

Proof of orders or documents of foreign courts
r 15A.14 ins SL2017-17 r 49

Service in accordance with service list
r 15A.15 ins SL2017-17 r 49

sch 6, pt 6.16
sch 6, pt 6.16 hdg note sub SL2015-22 r 52

Transitional—modification of rules for Magistrates Court
sch 7 exp 1 January 2007 (r 7010 (4))

Dictionary
dict am SL2009-32 r 15, r 16; A2009-49 amdt 3.34; SL2011-17 r 47
def ***accompanying affidavit*** om SL2012-24 r 24
def ***additional authority*** ins SL2009-32 r 17
def ***APLEC*** ins SL2014-9 r 12
def ***appeal*** am SL2015-22 r 53
def ***applicant*** sub SL2009-32 r 18
am SL2015-22 r 54; pars renum R41 LA
def ***application for a costs assessment*** ins SL2011-17 r 48
def ***appointed expert*** om SL2012-24 r 24
def ***approved academic institution*** ins SL2014-9 r 12
def ***approved course of study*** ins SL2014-9 r 12
def ***approved PLT course*** ins SL2014-9 r 12
def ***approved PLT provider*** ins SL2014-9 r 12
def ***approved subject*** ins SL2014-9 r 12
def ***arbitration*** ins SL2006-58 amdt 1.48
def ***Australia*** sub SL2017-17 r 50
def ***business*** sub SL2011-34 r 31
def ***business name*** sub SL2011-34 r 31
def ***carrying on*** ins SL2011-34 r 31
def ***carrying on business*** om SL2011-34 r 31
def ***case management meeting*** ins SL2006-58 amdt 1.48
om SL2015-12 r 10
def ***case summary*** ins SL2016-33 r 35
def ***category A proceeding*** sub SL2012-43 r 66
om SL2015-22 r 55
def ***category B proceeding*** sub SL2012-43 r 66
om SL2015-22 r 55
def ***category C proceeding*** sub SL2012-43 r 66
om SL2015-22 r 55

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def ***category D proceeding*** sub SL2012-43 r 66
om SL2015-22 r 55
def ***central authority*** ins SL2009-32 r 19
def ***certificate of service*** ins SL2009-32 r 19
def ***certifying authority*** ins SL2009-32 r 19
def ***chief executive*** om SL2011-17 r 49
def ***civil proceeding*** sub SL2012-43 r 67
def ***claim*** ins SL2006-58 amdt 1.48
def ***code of conduct*** am SL2012-24 r 25
def ***commission*** om R10 LA
def ***Commonwealth Evidence Act*** om SL2011-34 r 32
def ***conciliation*** ins SL2006-58 amdt 1.48
om SL2015-12 r 10
def ***conciliator*** ins SL2015-12 r 11
def ***concurrent proceedings*** ins SL2017-17 r 51
def ***conference*** ins SL2006-58 amdt 1.48
om SL2011-17 r 50
def ***contractor*** ins SL2006-58 amdt 1.48
def ***convention*** om SL2017-17 r 52
def ***convention country*** om SL2017-17 r 52
def ***coordination agreement*** ins SL2017-17 r 53
def ***court*** sub SL2006-58 amdt 1.49
am SL2011-17 r 51; pars renum R26 LA
def ***criminal proceeding*** sub SL2006-58 amdt 1.49
def ***Cross-Border Insolvency Act*** ins SL2008-50 s 17
def ***CYP director-general*** ins SL2011-17 r 52
def ***decision*** am SL2015-22 r 56
def ***defendant*** sub SL2006-58 amdt 1.49; SL2009-32 r 20
def ***dispute resolution conference*** ins SL2015-12 r 11
def ***docket*** ins SL2012-43 r 68
am SL2015-22 r 61
def ***enforcement hearing subpoena*** sub SL2006-58 amdt 1.49
am R22 LA
def ***enforcement hearing warrant*** sub SL2006-58 amdt 1.49
am R22 LA
def ***Evidence Act*** ins SL2011-34 r 33
def ***expert*** sub SL2012-24 r 26
def ***expert medical evidence*** om SL2012-24 r 27
def ***expert report*** am SL2012-24 r 28
def ***expert witness*** am SL2012-24 r 29
def ***family violence proceeding*** ins SL2017-10 r 18
def ***filed*** am SL2017-17 r 54
def ***fine*** ins SL2006-58 amdt 1.50
om R22 LA
def ***fine defaulter*** ins SL2006-58 amdt 1.50
om R22 LA

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def ***foreign judicial document*** ins SL2009-32 r 21
def ***foreign party participation*** ins SL2017-17 r 55
def ***forensic proceeding*** ins SL2012-43 r 68
def ***forwarding authority*** ins SL2009-32 r 21
def ***Global Guidelines*** ins SL2017-17 r 55
def ***Global Principles*** ins SL2017-17 r 55
def ***Hague Convention*** ins SL2009-32 r 21
def ***Hague Convention country*** ins SL2009-32 r 21
def ***head of jurisdiction*** sub SL2015-22 r 57
def ***initiating process*** ins SL2009-32 r 21
def ***injury notice*** ins SL2006-58 amdt 1.50
def ***judgment in favour of the defendant*** ins SL2014-34 r 24
def ***LACC*** ins SL2014-9 r 12
def ***listing hearing*** ins SL2015-22 r 58
def ***local judicial document*** ins SL2009-32 r 21
def ***local proceeding*** ins SL2017-17 r 55
def ***Magistrates Court Act*** ins SL2006-58 amdt 1.50
om SL2011-17 r 53
def ***Model Law*** ins SL2008-50 s 17
def ***nominated time*** om SL2015-22 r 59
def ***non-convention country*** om SL2017-17 r 56
def ***offer*** ins SL2014-34 r 24
def ***order*** sub SL2006-58 amdt 1.51
am SL2011-17 r 54; pars renum R26 LA
def ***originating process*** sub SL2006-58 amdt 1.51
def ***outstanding fine*** ins SL2006-58 amdt 1.52
om R22 LA
def ***period of acceptance*** ins SL2014-34 r 24
def ***personal violence proceeding*** ins SL2017-10 r 18
def ***plaintiff*** sub SL2006-58 amdt 1.53
def ***pleading*** sub SL2006-58 amdt 1.53
def ***practice direction*** ins SL2016-33 r 35
def ***prescribed offender*** ins SL2013-18 r 35
def ***prescribed scale of costs*** sub SL2006-58 amdt 1.53
def ***principal*** ins SL2006-58 amdt 1.54
def ***registrar*** sub SL2006-58 amdt 1.55; SL2009-32 r 22
def ***representative*** ins SL2006-58 amdt 1.56
def ***request for service abroad*** ins SL2009-32 r 23
def ***request for service in the ACT*** ins SL2009-32 r 23
def ***respondent*** am SL2015-22 r 60; pars renum R41 LA
def ***restoration order*** ins SL2006-58 amdt 1.56
om SL2011-17 r 55
def ***serious offender*** ins SL2013-18 r 35
def ***service list*** ins SL2017-17 r 57
def ***supporting material***, for part 5.4 ins SL2016-33 r 35
def ***the Act*** ins SL2012-43 r 68
def ***the Crimes Act*** ins SL2013-18 r 35

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def ***third-party respondent*** ins SL2006-58 amdt 1.56
def ***Trans-Tasman Proceedings Act*** ins SL2011-33 r 19
def ***Workers Compensation Act*** ins SL2006-58 amdt 1.56
def ***Wrongs Act*** om SL2012-24 r 30

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2006	1 July 2006– 14 Aug 2006	not amended	new rules
R2 15 Aug 2006	15 Aug 2006– 11 Sept 2006	SL2006-43	amendments by SL2006-43
R3 12 Sept 2006	12 Sept 2006– 31 Dec 2006	SL2006-43	editorial amendments under Legislation Act to update approved form notes
R4 1 Jan 2007	1 Jan 2007– 1 Jan 2007	SL2006-58	amendments by SL2006-58
R5* 2 Jan 2007	2 Jan 2007— 11 Apr 2007	SL2006-58	commenced expiry
R6 12 Apr 2007	12 Apr 2007– 30 June 2007	A2007-3	amendments by A2007-3
R7 1 July 2007	1 July 2007– 30 Sept 2007	SL2007-16	amendments by SL2007-16
R8 1 Oct 2007	1 Oct 2007– 31 Dec 2007	A2007-28	amendments by A2007-28
R9 1 Jan 2008	1 Jan 2008– 30 June 2008	SL2007-37	amendments by SL2007-37
R10 1 July 2008	1 July 2008– 28 July 2008	SL2008-25	amendments by SL2008-25
R11 29 July 2008	29 July 2008– 30 Sept 2008	A2008-20	amendments by SL2008-25

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R12 1 Oct 2008	1 Oct 2008– 26 Oct 2008	SL2008-44	amendments by SL2008-44
R13 27 Oct 2008	27 Oct 2008– 31 Dec 2008	SL2008-44	amendments by A2008-20
R14 1 Jan 2009	1 Jan 2009– 26 Feb 2009	SL2008-50	amendments by SL2008-50
R15 27 Feb 2009	27 Feb 2009– 29 Mar 2009	SL2008-50	amendments by A2008-20
R16 30 Mar 2009	30 Mar 2009– 29 May 2009	SL2009-11	amendments by SL2009-11
R17 30 May 2009	30 May 2009– 30 June 2009	SL2009-11	amendments by SL2008-50
R18 1 July 2009	1 July 2009– 1 July 2009	SL2009-32	amendments by SL2009-32
R19* 2 July 2009	2 July 2009– 16 Dec 2009	SL2009-32	commenced expiry
R20 17 Dec 2009	17 Dec 2009– 31 Dec 2009	A2009-49	amendments by A2009-49
R21 1 Jan 2010	1 Jan 2010– 30 June 2010	SL2009-56	amendments by SL2009-56
R22 1 July 2010	1 July 2010– 15 Aug 2010	A2010-21	amendments by SL2010-24 and A2010-21
R23 16 Aug 2010	16 Aug 2010– 31 Dec 2010	SL2010-24	amendments by A2010-2
R24 1 Jan 2011	1 Jan 2011– 28 Feb 2011	SL2010-51	amendments by SL2010-51
R25 1 Mar 2011	1 Mar 2011– 30 June 2011	SL2011-6	amendments by SL2011-6
R26 1 July 2011	1 July 2011– 6 July 2011	SL2011-17	amendments by SL2011-17
R27* 7 July 2011	7 July 2011– 20 Sept 2011	A2011-20	amendments by A2011-20

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Republication No and date	Effective	Last amendment made by	Republication for
R28 21 Sept 2011	21 Sept 2011– 31 Dec 2011	A2011-20	amendments by SL2011-17
R29 1 Jan 2012	1 Jan 2012- 29 Feb 2012	SL2011-34	amendments by SL2011-34
R30 1 Mar 2012	1 Mar 2012– 27 May 2012	SL2011-34	amendments by SL2011-34
R31 28 May 2012	28 May 2012– 30 June 2012	SL2011-34	amendments by SL2011-34
R32 1 July 2012	1 July 2012– 31 Dec 2012	SL2012-24	amendments by SL2012-24
R33* 1 Jan 2013	1 Jan 2013– 30 June 2013	SL2012-43	amendments by SL2012-43
R34 1 July 2013	1 July 2013– 10 Oct 2013	SL2013-18	amendments by SL2013-18
R35 18 Dec 2013	11 Oct 2013– 31 Dec 2013	SL2013-18	amendments by SL2011-33
R36* 1 Jan 2014	1 Jan 2014– 14 Mar 2014	SL2013-32	amendments by SL2013-32
R37 15 Mar 2014	15 Mar 2014– 30 June 2014	SL2014-4	amendments by SL2014-4
R38 1 July 2014	1 July 2014– 31 Dec 2014	SL2014-9	amendments by SL2014-9
R39 1 Jan 2015	1 Jan 2015– 28 Apr 2015	SL2014-34	amendments by SL2014-34
R40 29 Apr 2015	29 Apr 2015– 30 June 2015	SL2015-12	amendments by SL2015-12
R41 1 July 2015	1 July 2015– 9 Dec 2015	SL2015-22	amendments by SL2015-22
R42 10 Dec 2015	10 Dec 2015– 31 Dec 2015	A2015-52	amendments by A2015-52
R43 1 Jan 2016	1 Jan 2016– 6 Apr 2016	SL2015-42	amendments by SL2015-42

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R44 7 Apr 2016	7 Apr 2016– 3 May 2016	SL2015-42	amendments by SL2015-42
R45 4 May 2016	4 May 2016– 30 June 2016	SL2015-42	amendments by A2015-40
R46 1 July 2016	1 July 2016– 3 Nov 2016	SL2016-17	amendments by SL2016-17
R47 4 Nov 2016	4 Nov 2016– 31 Dec 2016	SL2016-31	amendments by SL2016-31
R48 1 Jan 2017	1 Jan 2017– 30 Apr 2017	SL2016-33	amendments by SL2016-33
R49 1 May 2017	1 May 2017– 7 July 2017	SL2017-10	amendments by SL2017-9 and SL2017-10
R50 8 July 2017	8 July 2017– 31 Dec 2017	SL2017-17	amendments by SL2017-17

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